De verborum ſignificatione

THE EXPOSITION OF THE TERMES AND *DIFFICILL VVORDES*, CONTEINED IN THE FOVRE BVIKES

of Regiam Majeſtatem, *and vthers, in the Actes of* Parliament, Infeftments, and vſed in practicque *of this Realme, with diuerſe rules, and commoun places, or principalles of the Lawes:*

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To the Reader.

I HAVE rather opened and ſchawen ane occaſion to the (gude Reader) to performe this warke, then exponed, or declared the ſamin; Being ane mater nocht pleaſand in it ſelfe, nor treated be vthers of before: Gif I haue preaſed to do weill or attempted that, quhilk vthers maie accompliſh and make perfite, the proffite and commoditie redoundis to thee, quha at thy pleaſure, may big vpon this little ground, and fundament. Gif vther waies be errour, or ignorance, I haue nocht ſatisfied thy deſire, and expectation, Sit erranti medicina confeſſio. For ane abſolute memorie, and perfite knawledge, in na thing erroneous, is proper to God, and nocht competent to man. Quhateuer I haue done, I did it nocht to offend thee or to diſpleaſe anie man, bot to prouoke vthers to doe better, alwaies for thine awin weil, be warre to reprehend my doinges, flowand from ane benevolent, and gude mind: except thou be aſſured, to be reprehended of naman, quha cummis after the and ſall cenſure thy doinges. I am affrayed of all Readers, for ilkman hes his awin Iudgement & opinion, quhairof their is als monie contrarieties, as diverſities of perſones. Adviſe therefore, & or thou do onie thing raſchlie, gif thou maie tranſact and aggree with all the poſteritie, that albeit thou do alſweill as Homer in his poeſie: nane of them be vnto thee, ſucceſſour or imitatour of Zoilus. ſo great is the varietie of ingines, and inclinations, that nane can be ſure fra reprehenſion. Reade therefore, and mak thy profite of gud thinges. Correct modeſtlie all errours, quhilks are ignorant, and nocht willfull. Eike all neceſſaries omitted. Cut awaie all ſuperfluities adiected. And quhateuer thou do, eſteeme of me, as I do of thee and of al, to quhais knawledge, this my little labour, ſall happen to cum. And ſwa,

Viue, Vale, ſi quid noviſti rectius iſtis,
Candidus imperti: ſi non, his vtere mecum.

THE EXPOSITION OF *THE DIFFICIL WORDES AND*

termes, conteined in the foure buikes of Re-GIAM MAIESTATEM, & vthers: In the acts of Parliament, *infeftments, & vſed in the practicque of this Realme, with* divers Rules, and commoun places, or principall groundes of the Lawes.

ACTILIA, Armour, Weapons, Harniſhing. Sta. 2. *Roberti Bruyſe. c. ordinatum* 27. Quhair it is ſtatute that ilk man havand Ten pounds worth of gudes ſall haue for the defence of his bodie & Realme, ane ſufficient Acton, and baſnet, with gluifes of plait, ane ſpeir, ane ſword, and quha-ſa-euer hes nocht ane Acton, and baſnet, ſall haue ane ſufficient habirgeon, or ane Irone jack, ane Knapiska of Irone, and gluifes. Swa that ilk man ſalbe readie *cum actilijs & harneſijs ſuis*, vnder the paine of eſcheit of all his guides; the ane halfe thereof to the King, and the vther halfe to his maiſter, and Lord. *Acton* ane aulde Frenche word, *Hocqueton*, quhilk corruptlie is pronunced *Octon*, *ſagum militare*. Sum affirmis *Acton* to be an auld kinde of armour, for preſervation of ane manis bodie, maid of ſteill or Irone, quhilk couered his head alſweill as the reſt of his bodie: Quhairof zit are ſum extant as auld monumentes in the Hie-landes, Bot noucht dailie vſed, or worne. Vthers mair probablie alledgis *Acton*, to be ane forme of armour, quhilk coverſ ane mans bodie (except his head) downe to his knee, maid of Taffitie, Ledder, or Linnen clajth, ſtuffed with caddes, and ſtiked verie thick with threid, or ſilke of diverſe coullers, and partial gilt, with ſpranges or ſtreames of Gold fuilzie, And is commonlie vſed in time of battell vnder the habirgeon, to ſaue ane mans bodie, fra the ſchot of ane arrowe: or fra the bruſing of the ſtraik of an ſword. It is an kinde of that abuilzement, quhilk in Latine is called *veſtis virgata, variis virgis ſeu aureis lineis diſtincta, & variegata, vt eſt illud Virgilij AEneid* 8. *Virgatis lucent ſagulis.* *The paine of them quha cums evil armed to the Kings hoiſt.*

ACTORNATVS. Lib. 4. c. *ſiquis defendens* 46. *actor, alienorum negotiorum geſtor*, ythers waies in the Lawes of this Realme called *reſponſalis*, quha makis anſwer for ane vther in judgement, ſpeciallie for the defender Lib. 1. c. *Eſto* .27. Lib. 3. c. *Placita*. 12. *cum ſeqq:* Like as *Proloctutor* is he quha ſpeaks for the perſewer, as his foreſpeaker. Lib. 1. c. *conſequenter* 13. Alſwa *actornatus* is he quha dois ony thing in an vther mans name or behalfe, As he quha compeiris for ane vther in courtes, or Iuſ- *Reſponſalis* *proloqutour.*

tice aire, to pas vpon inqueiſtes, and ſerving of retoures, to the Kingis Chapel, or to giue preſence for him, quha ſendis him. For he quha aucht baith ſute, and preſence in onie court, ſuld nocht onelie ſend ane ſutour to decide actions, and cauſes, conforme to the Law, bot alſo ſuld compeir perſonally, or ſend ane Actornay, quhilk alſo he ſuld do, quha aucht preſence allanerlie, for ather he ſuld compeir, or ane Actornay for him, with the ſeall of his Armes, the quhilk all friehalders, dwelland within the ſchireffdome, ar oblíſhed to do, in al Schireffe courts. I. 1. p. 9. c. 130. In juſtice aires Actornayes, ſuld be honeſt and ſufficient perſons of diſcretion. Ia. 1. p. 3. c. 53. And *Actornatus Iuſtitiarij*, is taken for the Iuſtice depute *quon. attach c. præpoſitus.* 61. Aſſ. Reg. Da. c. *nullus* 16. *Actornay* is not onlie the procuratour quha is ſent: Bot alſo the procuratorie or *mandat* quhilk is given to him, and zit they are different, for ane procuratorie is cõmonlie maid be ane privie man: And ane Actornay called *litera Actornatus*, is granted be the King, or onie vther, havand Chappell. Stat. Rob. 3. c. *vlt.* generallie, *in omnibus negotijs, loquelis, et placitis motis, ſeu movendis.* And therefore the Lordes of Seſſion decerned ane requiſition of ane aire, anent his mariage, maid be ane Actornay, to be nul. Becauſe all ſike requiſitiones, ſuld be maid be the ſuperiour, or be ane procuratour hauand ſpeciall power, to that effect.

ADIVRNATVS, ane French word, ſummoned or called to ane certaine daie, like as *Adiurnamentum* is called an ſummonds, or *citatio, ſummonitio*, Quhilk is defined, *certi diei & loci exhibitio partibus, ad diem legalem, quoniam attach. c. 1. Præceptor meus Matthæus Weſenbecius in paratitl. Tit. de in ius vocando. Nu. 13. definit citationem, vt ſit actus Iudicialis, ſeu Iudicij præparatorius, quo is quem coram ſiſti opus eſt, Iudicis mandato, legitimé vocatur, Iuris experiundi cauſa. Et aſſiſa dicitur adiornata ad alium certum diem.* That is continewed to ane certaine daie. Lib. 4. c. Si *Petens.* 57. *& curia dicitur reſpectuata.* That is continued or reſpleited. Stat. 2. Rob. Br. c. *Item quæcunque.* 34. *Cheſſneus in conſuetudines Burgundiæ Rub. 1. §. 6. verb. meſſiers & ſerients. Nu. 38. multa (inquit) ſunt nomina, quæ idem important, vt eſt citatio, in ius vocatio, monitio, edictum, denunciatio, conventio, & aliud quod in vulgari noſtro dicimus, adiornamentum.* *Adiournall* is the Iuſtice Aire, as ane act of *Adiournal*, ſo called, becauſe it is maid in the Iuſtice air. *vid. Iter*

ADVOCATIO *Eccleſiæ*, Is the richt of patronage, or the title and richt to preſent onie perſon to ane Kirk vacand, and nocht havand ane lauchfull Eccleſiaſticall perſon to rule and governe the ſamin. Lib 2. c. *Dos.* 19. Lib. 3. c. *ſequitur* 30. *Dicitur autem advocatio Eccleſiæ, vel quia patronus alicuius Eccleſiæ, ratione ſui iuris, advocat ſe ad eandē Eccleſiam: & aſſerit ſe in eam habere ius patronatus, eamque eſſe quaſi ſuæ clientis loco. Vel potius cum aliquis (nempe patronus) advocat alium, iure ſuo, ad Eccleſiam vacantem eumque loco alterius (veluti defuncti) præſentat, & quaſi exhibet.* In the Engliſh Lawes it is called, Avowſon of Kirkes.

Avowſon of Kirkes.

AFFIDATIO

AFFIDATIO, *Lib. 2. c. vnde 49.* In the quhilk place, *Mutua affidatio*, is taken for ane mutuall faith, trueth, and obligation of fidelitie, quhilk is betuixt the wife and the husband. And sicklike it signifies the mutual league, and band of fidelitie, quhilk is betuixt the ouer-lord, and his vassal, quha are bound & oblished *hinc inde* to vtheris, quhilkis called *mutua domini et homagij fidelitatis connexio. lib. 2. c. mutua 68.* In sik sort, that how far the vassall is bound be reason of homage to his superiour: sa far the superiour is oblished to his vassal, except reuerence and honor allanerly, for the ane suld obey and serue his master: the vther suld interteine and defende his man. And the vassall suld honour and reuerence his master as his superiour: But the master suld not reuerence the vassall: for like as of the law, there is na soueraintie, nor impyre amangis them that are *pares*, conforme to the rule of the Lawe, *par in parem non habet imperium.* Even swa, the superiour is not oblished to mak onie reverence to his inferiour, bot suld receaue honour fra him. *Item Diffidatio*, (h. e. *inimicitiarum capitalium denunciatio*, quhen ane defies ane vther, & gives vp kindnesse with him) is contrair to *affidatio*. Baith the ane and the vther is driven a *fide, vel fidelitate*: or fra ane word vsed in the fewes. *faida*, that is battell, feid, iniurie, hatred. As we commounlie say deidlie feid. And *fœmina dicitur faidam non facere*, gl. in *§ vlt. de lege Comadi*, li. 2. *de feud*: be reason wemen be the Law, are nocht subject to weir-fair, to battell, or proclamation maid for that cause. *Diffidatio.* *Faida.*

AMERCIAMENTVM, or FORIS-FACTVM *Curiæ.* The vn-law or amerciament of a court, for absence in lawfull time, for ane fault, trespas, or ony vther cause, as is manifest in the Register, in the action persued be the Thesaurar contrar the burgh of Perth, 16. Decem. 1541. The vn-law in the Chalmerlanis aire or court, is fiftie schillings: and twa schillings to the Serjandes of the burgh of ilke vn-law. The vnlawe before the Iustice on the North paint of the water of Forth, aucht Kye, ane colpindach to the Crowner, and twa schillings to the Clerke: And in the South-side of the water of Forth, as in Louthian, & betuixt the water of Tyne, and Forth, ten pundis, and ane colpindach, or threttie pennies to the Crowner, and twa schillings to the Clerk. In the Schireffe-court, it suld nocht exceed sextene schillings, and twa schillings to the Clerke, or ane colpindach, or threttie pennies. In the Barrone court the samin lawes & vn-lawes, suld be keiped, quhilks are vsed in the Schireffe-court. In the court of them quha haldis of Barrones, and are called *milites*, their vn-law is half of their superiours vn-law. The vnlaw of them quha are called *subarmigeri*, is ane Kowe, ane zowe, or three schillinges, *leg. Malc. Mak. c. 4.* The vn-law within Burgh suld not exceed the summe of aucht schillings, *leg. burg. c. foriffactum 42.* The vn-law of them quha compeiris nocht in Parliament, being lauchfullie warned thereto, is ten pounds. Ia. 1. pri. Iulij p. 4. c. 82. & p. 5. c. 99. Quhilk is like-wayes the vnlaw of them quha compeiris nocht in generall Conncelles, quhilk now is altered be the newe act of Parliamente, maid be OVR SOVE- *The vn-law of courtes.*

RAINE LORDE King Iames the Sext. 29. Iulij. p. 11. c. 34. Quhair it is ſtatute that everie Earle ſall pay three hundreth pounds, ilk Lorde twa hundreth poundes, Ilk Prælate ane hundreth poundes: And euerie Burgh ane hundreth markes, incaſe it ſall happen onie of them to be abſent fra the Parliament.

ANNEXATION, Ane Latine word, quhilk ſignifies ane faſt knitting and binding, as quhen ane thing is bund or knit with ane vther and baith as it were vnited togidder, and incorporat in ane. As quhen ony Lord ſhippes, landes, Caſtelles, Cuſtomes, Offices, Fiſchinges, or vther rents are annexed to the Croun, to remaine perpetually their-with quhilk is called *incorporatio, quando bona aliqua, veluti terra, rediguntur in corpus fiſci, cum eorum ſcribitur Inventarium, manu publica, continens eorum nomina & qualitates, & ita ponuntur in numero rerum fiſcalium l. ſi quando 3. & ibi* gl. C. *de bonis vacan.* lib. 10. In the Lawes of this Realme their is twa kindes of annexation: The ane quhilk may be called *tacita*, quhairin the word of Annexation is nocht expreemed, bot vther wordes equivalent theirto. The vther is *expreſſa*, quhilk conteins manifeſt mention of annexation or vnion. The firſt forme is vſed in the daies of king *David* the ſecund 6. Novem. 1357. quhair it is ſtatute & ordaned, that al lands, rents, and poſſeſſiones, quhilkis of auld perteined to the crown, or the Kingis domaine and propertie, ſuld all and haill, and perpetuallie remaine in the hands and poſſeſſion of the King, for his ſuſtentation & liuing, without ony alienation theirof. And ſik like 27. Septem. 1367. with conſent of the three Eſtaites, it was ſtatute for the Kingis better ſuſtentation, & living, that al remes, fermes, kanes, cuſtomes, forreſtes, offices, and vther emoluments quhat-ſum-ever: And alſo all landes, alſweill the propertie, & vthers, in poſſeſſion quhairof King *Robert* 1. father to King *Dauid* the ſecond, deceaſed as of fie, and that all poſſeſſiones, & landes quhilkis perteined to the richt and propertie of the Crown, the time of the ſaid King *Robert*, or of King *Alexander* the thrid, or of the ſaid King *Dauid* the ſecond, ſuld returne all and haill to the crown, with all advocations of Kirkes, and all ſeruice perteining theirto; To remaine perpetuallie with the Crown, nocht-with-ſtanding onie alienation theirof, maid to onie perſon, and that na diſpoſition theirof be maid thereafter, without conſent of the three Eſtaites. And gif onie perſon had onie of the ſaides landes laboured with his awin pleuch: It was ordaned that he ſuld paie alſmeikle ferme and dewtie therefore, as the ſamin micht gudlie pay, or as onie vther lands als gud, and alsmeikle, vſed to pay. And ſiklike al the great and ſmall cuſtomes, and burrow mailles of the Realme, are ordaned to abide and remaine with the King, till his living, be ane act maid be ja. 1. Parl. 18. c. 8. Of the ſecond forme of Annexation quhairby landes, poſſeſſiones and vthers, *per expreſſam*, are annexed, vnited, and incorporate diverſe and ſindrie examples are extant in the actes of Parliament of King *Iames* the 2. 12. Par. 4. *Aug.* c. 41. & of vthers maid thereafter

Twa kindes of anexation.

The ſecond kinde.

ter. Landes, and vthers dewties, or poſſeſſions quhatſum-euer annexed to the crown, being annalied or diſponed, na lauchful diſſolution maid theirof, It is leſume to the King, nocht withſtanding the ſaid alienation to put his hand to the ſaides landes, and tak them back againe to the Crown, *breui manu*, without onie ordour or proces of law. And as concerning the proffites theirof, quhilkis are extant, *pendentes*, *& nondum conſumpti*, the time of the ſaid intromiſſion, the king, or his comptrollar maie intromet their with, in the ſamin maner, as he maie intromet with the landes *iure ſoli, quia fructus pendentes, & extantes cenſentur pars ſoli.* And tuitching the fructes, and proffites of the landes quhilkis are ſpended, and conſumed; The King and his comptrollar, aucht & ſuld repeete the ſamin fra the poſſeſſoures, and vptakers of the ſaidis fructes, of all zeires of their intromiſſion their-with, be waie of action, becauſe they ar conſumed and ſpended. Quhilk deed conſiſtand in *facto*, ſuld neceſſarlie be proven be ordinar waie of action. To the quhilk hail proffites the King hes gud richt, in reſpect that of the Law, *male fidei poſſeſſor*, can never acquire and conqueis to himſelfe, onie fructes or proffites, ather extant or conſumed. And trew it is that al thay, quha receivis ony infeftment or vnlauchful diſpoſition of the Kings annexed property, ar *male fidei poſſeſſores*: they receaving the ſamin againſt the manifeſt law of this Realm. the ignorance quhairof excuſis na inhabitant of the ſamin. And mairover, trew it is that the foreſaid forme of intromiſſion with the Kingis annexed landes, and repetition of the proffites theirof, hes bene in vſe and practik ſen the making of the actes of Parliament theirupon: Likeas in the beginning of the reign of King *Iames* the Fourth 18. Ian. 1488. the landes & Lord-ſhip of *Brechin*, and *Nevar* were taken fra *Dauid* Earle of *Crawfurd*, and ane terme aſſigned to proove againſt him, the availl of the maills and dewties of the ſaides Landes with the pertinentes, intrometted with be him, ſen the time of the gift theirof. Item the King may intromet with his annexed propertie, and proffites theirof, quhidder he be *maior* or *minor*, For gif their be na lauchfull diſſolution of the ſamin, he is aye as it were *minor* anent his ſaid propertie. Al annexations ar perpetuall, and induris continuallie, ay and quhill ane lauchfull diſſolution be maid be onie King: Induring the time of the quhilk diſſolution, the annexation ceaſis, & ſleepis, and the diſſolution being ended be deceaſe of the maker theirof, the ſaid annexation beginns to quicken *& quaſi reviviſcere*, In ſik ſort that the King quha ſucceidis to the maker of the ſaid diſſolution may ſet na fewes of his annexed propertie, be vertew of the diſſolution maid be his Predeceſſour, bot mon make ane new diſſolution to the effect foreſaid. Quhilk fault and vice, I finde in divers and ſindrie infeftmentes of the propertie: and ſpecially in the minoritie of King *Iames* the Fifth, quhilkis are wrangeouſly given be vertewe of the diſſolution maid be King *Iames* the Fourth, his Father. *vid.* Diſſolution.

Landes annexed and nocht diſſolued may nocht be annalied.

Of the proffites of landis annexed wrangeouſlie annalied.

The Kingis property wrangeouſlie annalied.

Annexation is perpetuall.

Annuell

ANNVELL ane word vſed in the practik of this Realme, for an zeirelie reuenue, or dewty, payed at certaine termes, ather legal, quhilks are called *termini legales vel legitimi*, preſcrived and appoynted be the law of this Realm, ſik as Martin-mes & Whit-ſonday. Or conventional as pleaſis the parties till agree and appoynt, be paction and contract, as betuixt *Zule* and *Candel-mes*, or onie vther time. In the Actes of Parliament maid be Queene *Marie* 4. Parlia. 29. Maij, c. 10. mention is maid of ground annuell, few annuell, and top annuell, quhairof I haue red nathing in onie vther place: and am incertaine quhat they do ſignifie: bot referris the ſamin to the judgement and opinion of the reader. Alwaies ground annuell is eſteemed to be quhen the ground and propertie of onie kind bigged or vnbigged, is diſponed and annalied for ane annuell to be payed to the annalier theirof, or to ane vther perſon, ſik as onie Chaiplaine or Preiſt. Top annuell is ane certaine dewtie, given and diſponed furth of onie bigged tenement, or land, of the quhilk tenement the propertie remains with the diſponer & he is onelie obliſhed to pay the ſaid annuell. Few annuell, is ather quhen the few maill, or dewtie is diſponed as ane zeirelie annuel. Or quhen the land, or tenement is ſette in few-ferme heretablie for ane certaine annuell to be payed *nomine feudiſirmæ*. The annuell of Norwaie quhairof mention is maid in the actes of Parliament of King Iames the thrid, & in the Regiſter of this Realm, was ane annuell of the ſumme of an hundreth markes, ſterling money. quhilk the Kings of this Realme was obliſhed to pay zeirlie to the King of Norwaie, for the cauſe after ſpecified. Becauſe *Donald Bane*, brother to King *Malcolme Canmoir*, wrangeouſlie after the deceaſe of his brother vſurped the richt of the Crown againſt his brother ſones, *Edgar Alexander*, *David*, and vthers. And for help, and ſupplie, gaue all the Iles of *Scotland* to the King of Norway, quhairthrow, and for vther occaſiones, monie bluidie and cruell battalles followed, vntill the battell of *Larges* 3. Auguſt, 1263. In the time of King *Alexander* the thrid. And *Acho* King of Norway: Quha thereafter in the ſamin zeire 22. Ianuarie departed in *Orkney*. And the Scottis beand victorious, *Magnus* the fourth of that name, King of Norway, ſonne to the ſaid *Acho*, maid peace and concorde, with the ſaid King *Alexander* in anno, 1266. and renunced, quite-clamed, and diſcharged al richt, or title, quhilk he or his ſucceſſors had, or micht haue, or pretend to the Iles of *Scotland*. The King of *Scotland* payand theirfoir zeirlie to the ſaid *Magnus*, and his ſucceſſores ane annuell of ane hundreth marks, ſterling money. Quhilk contract and agreance was ratified, and confirmed be *Haquinus* King of Norway, the fifth of that name, & *Robert* the firſt, King of *Scotland*, in anno 1312. Bot at the laſt the ſaid annuel, with all the arrierages, and byrunnes thereof, was diſcharged, and renunced *ſimpliciter*, in the contract of Mariage betuixt King Iames the thrid, and *Margaret*, onelie daughter to *Chriſtianus* the firſt, King of Norway, Denmark, and Sweden 8. Septemb. 1468. Quhilk diſcharge is nocht onelie ratified, bot alſo renewed thereafter be

Ground annuell.

Top annuell.

few annuell.

The annuell of Norway

be the ſaid *Chriſtianus* 12. Maij. 1469. And like-wiſe the ſaid King *Iames* the thrid. 24. Fe. 1483. commanded his Ambaſſadours ſend to the Paip, to deſire confirmation of the ſaid perpetuall renunciation, & diſcharge of the contribution of the Iles.

ARAGE, vtherwaies Average, from *Averia*, Quhilk ſignifies ane beaſt, as ſalbe hereafter exponed: And ſwa conſequentlie Average, ſignifies ſervice, quhilk the tennent aucht to his maiſter, be horſe, or cariage of horſe 18. Ian. 1501. *Iohn Stewart* contrair *William Blair*. In the act of Parliament. Ia. 4. p. 2. c. 10. It is *written Avarage*. & like-waies, in the indenture at *Perth* pen. Mart. 1371. betuixt *Robert Steward* Earle of *Menteith* vpon the ane parte, and Dame *Iſabell* Countes of *Fiſe*, on the vther pairt, it is plainely written, *cum Auaragiis et Cariagiis*. In the quhilk indenture, the ſaid *Iſabel* dauchter & aire to *Duncane* Earle of *Fiſe*, and ſpouſe to *Walter Stewart* brother to the ſaid *Robert*, in the time of hir Widuitie, after the deceaſe of hir ſaid husbād, obliſhed hir, to reſigne the ſaid Earldome of *Fiſe*, in the Kingis handes in favoure of the ſaid Earle, for new heritabill infeftment theirof, to be given to him. The quhilk indenture is ſubſcrived be *Ioannes Rollo*, quha was ſecretarie to the ſaid Earle. And conforme theirto, reſignation was maid: for the quhilk ſcho received zeirelie for hir ſuſtentation, ane hundreth fourtie fiuepundes, ſterling money. Like as alſo the ſaid *Iſabell* 22. Iunij 1389. reſigned *ad perpetuam remanentiam*, In the handes of King *Robert* the thrid, the Barrone of *Strathurd*, *Strabraun*, *Diſcher*, *Toyer*, with the Ile of *Tay*, lyand within the Schiref-dome of *Perth*. The Barrone of *Cowll*, & *Oneil*, with the fortalice theirof, and patronage of the Kirk of *Kincardin* within the Schirefdome of *Aberdene*, the Barrons of *Crumdail*, & *Affyn*, within the Schirefdome of *Innernes*, the landis of *Strahovie*, and *Abbrandolie*, within the Schireffedome of *Bamf*. The landes of *Logyachry*, within the Schireffdom of *Perth* the Barronie of *Calder*, within the Conſtabularie of *Linlithcow*, and Schireffe-dome of *Edinburgh*, and the landes of *Kellynſyth*, within the Schireffedome of *Striuiling*. This I thoucht gud to advertiſe the reader how the Earledome of *Fiſe* & vthers landes foirſaids, perteined to the Crowne. Duke *Murdo* ſonne to the ſaid Erle of *Fiſe*, being forefalted And that be King *Iames* the Firſt. 1424. The ſaid Earledome was decerned to remaine perpetuallie with the Crown, like as it dois, as ane ſpeciall pairt of the annexed propertie. As alſo the Lord-ſhip of *Methven* within the Schireffedome of *Perth*, and the barronie of *Kellie*, within the Schireffedome of *Forfar*, did fall in the handes of King *Robert* the firſt, be done of forefaltour pronunced againſt Schir *Roger Mowbray* Knicht.

Iſabell countes of Fiſe.

Sundrie Lands perteining to the Crown.

ARRENDARE, ane Spaniſh word, commonlie vſed in chartoures and infeftments of this Realm, in *latin*, *locare ſeu rem aliquam vtendam*, *fruendam*, *non gratis*, *ſed certa mercede interveniente concedere*. For conforme to the French, rent is ane certaine dewtie, as annuell rent, and *arentare* and theirfra *arrendar*, *quaſi ad certum rentum ſeu reditum dimittere* to ſet and giue, landes or tenementes to onie man for an zeirlie duetie.

ARRERAGIVM, or properlie *Arricragium*, an French word, *arrier*, bakward: in Latine *retro*, as *Iamais arrier*, vſed be the Erls of *Angus*, in their armes, to quhom it perteins to fecht the Kingis wantgard, as of auld it did appertain to *Makduffe* Earl of *Fife*, as writis *Hector Boetius*. *Arrieragium firmarum*, ſignifies the by-run annuel, mails, fermes, profites or dewties of onie tenement, or landes, the quhilk reſtis vpon the ſamin vnpaid. *quoniam attach. c. ſi tenementum. 27, Leg. Burg. c. ſi quis voluerit. 156.*

1 ASSISA, ane French word, Quhilk ſignifies properlie ſitting, or Seſſion, and hes divers vther ſignifications in the Lawes of this Realme, for *aſſiſa* is taken for ane conſtitution, ordinance or law. *Lib. 3. c. ſequens.*

2 *23.* quhair it is called *recognitio*. And *Lib. 1. c. ſi non 23.* mention is maid of ane eſſonzie, or excuſe, conforme to the Law and aſſiſe of the land. And *aſsiſa* is called ane conſtitution, law or ſtatute. *Lib. 4. c. die lunæ. 13*, as *aſsiſa regis David Stat. Alex. c. aſsiſa* 18. And *aſsiſatum* ſignifies ſtatute, or ordaned St. 2. *Ro. Br.* c. Item *ordinatum* 26. King *David* maid an aſſiſe, or conſtitution of him quha was accuſed in judgement, and clenged, for the death of his wife, *aſsiſa* Reg. Da. c. *ſi quis velit. 33. aſsiſa terræ* is taken for the Law & conſtitution of the Land, Lib. 4. c. *ſi vir. 16. c. ſciendum. 64. aſsiſam infringere*, is to violate & tranſgres the Law. And *aſsiſa* of King *Iames* the Firſt of weichts and meaſures maid at *Perth.* 11. Mart, and the Firſt zeire of his reigne. *Iuxta aſsiſam. Lib. 2. c. dicitur autem. 74.* is conforme to the law, or *Iuxta legem*, is conforme to the time preſcrived be the Law,

3 Lib. 3. c. *ſequens. 33. in fin.* Item *aſsiſa* is called ane meaſure, or certaine quantity, as the barrell bind of Salmond ſuld keepe and conteine the aſſiſe, and meaſure of fourteene gallons. Ia. 3. 1. Octob. Parl. 14. c. 110. and all Salmond ſuld be packed in barreles, of the meaſure of *Hamburgh*, after the auld aſſiſe, and na ſmaller barrels nor veſſelles. Ia. 3. 6. *Auguſt:*

Aſsiſe herring. Parl. 10. c. 76. *aſsiſa halecum*, the aſſiſe herring, ſignifies ane certaine meaſure, and quantitie of herring, quhilk perteinis to the King as ane pairt of his cuſtumes, and annexed propertie, Ia. 6. p. 15. c. 237. For it is manifeſt that he ſuld haue of everie Boat, that paſſis to the draue and ſlayis herring, an thouſad herring of ilk tak that halds, *viz.* of the Lambmes tak, of the winter tack, and of the Lentrone tack, in *December.* 1516. The Kings advocat contrar *William Harper*, and his Colleges. Item the Kings rents of aſſiſe is interpreit, to comprehend the Kingis Lands and cuſtums 9. *Decem.* 1466. & 11. *Mart.* 1500. In the action betuixt *Iames Ogilbie*,

4 contrair *Patrick Gray*, certaine oxen was poynded for ſindrie vnlawes, & for the rent Aſſiſe aucht to the Kings Hienes for the blench ferms of the lands of *Arlie*. And ſik-like the thrid of the Kings rent of the Aſſiſe, That is to ſay, the lands & cuſtomes, ſuld perteine to the Queene, as hir dowrie, Ia. 3. 9. *Octob.* p. 1. c. 2. In this realme ane Aſſiſe is called ane certaine

5 number of men lauchfullie ſummond, received, ſworne & admitted to judg & determe in ſindrie civil cauſes, ſik as perambulations, cognitions moleſtations, purpreſture, diviſiõ of lands, ſerving of brieves, and in all & ſindrie criminal cauſes. For be the law of this Realm, al crimes ſuld be decided,

decided & tryed be an aſſiſe, *Stat. Alex. c. 3.* Quhairof their is twa kindes. Ane ordinarlie in vſe, quhilk may be called ane litil aſſiſe, of the nummer of 13. or 15. perſons, *lib. 3. c. generalia 25.* The vther called an greate aſſiſe, quhilk conſiſts of 25. perſons, *l. 1. c. pœna. 16. lib. c. 2. dos. 19*, & all the aſſiſors, in baith the ane & the vther aſſiſe ſuld ſweare an ſolemne aith, to judge & decerne richtly. *vid. bona pat.* For the quhilk cauſe they ar called *Iuratores li. 1. c. pœna. 16.* & in ſum buiks *aſſiſa*, is called *iurata patriæ*, & in the Engliſh lawes an Iury. The great aſſiſe (quhilk is not cõmonly vſed in this realm) is choſen againſt ſik perſons, as hes bin vpon an litil aſſiſe, & ar accuſed *de periurio vel temerario iuramento:* & that they haue done wrang againſt the laws in clẽging onie treſpaſſor quha is guilty & fowle of the crime. In the quhilk caſe, the man that is clenged, albeit wrangouſly, can not be filed againe or puniſt: for he being anis quite, he is ever quite for that crime: bot the aſſiſors may be accuſed of their wrangous deliverãce. I. 3. p. 8. *c.* 20. N. c. 63. The great aſſiſe ſuld be of 25. perſons, Nobill & gentilmen. And the Lords of the Seſſion, vpon the firſt daie of Iunij. 1591. declaired all them to be eſteemed, haldẽ & repute as Nobil perſons & gentilmẽ; that ſal happen to be ſummond vpõ ſik an aſſiſe, quha are landed-men, albeit they be inferior in rank and dignitie to them, vpon quhais aſſiſe they ſuld paſſe. *twa formis of aſsiſes.*

ATTAYNT, *Tayne*, an word meikle vſed in the Engliſh lawes, *Attayntus*, is accuſed, filed or convict, for ony crime or cauſe. *Stat. 2. Ro. Br. c. Item. 9. c. Item dominus 21. c. Item. 24.* An Iudg being convict, or attaynt of taking of budds, or of partialitie, ſuld be puniſhed at the Kings wil, & tine his office. *Sta. 2. Ro. Br. c. dominus rex. 22. Stat. 1. Rob. Br. c. Item quòd nullus. 8. I 5. p. 7. c. 104.* Bot attaynt or *Tayne*, is called the deliverãce or probatiõ of 24. (*aliàs* 25) leill men, the quhilk may be called an great aſſiſe. *lib. 1. c. pœna. 16.*

ATTACHIAMENTVM, from the French word, *attacher, ligare, nectere*, ane charge or binding of ony perſon, to the effect he may be drawen, & compelled to compeir in judgemẽt and anſwer as law wil. In the preface & beginning of the buike called *quoniam attachiamenta, attachiamentum dicitur quoddam vinculum legitimum, per quod pars defendens invita aſtringitur, ad ſtandum Iuri, & reſpondendum parti de ſe conquerenti iuridicè.* And *attachiament* ſumtimes is of guds and geare, as in contractes, conventiones, and actions of moveabill gudes, in the quhilk the gudes and geare of the defender are *attached*, vntill he find caution and pledges to anſwer as law wil, quhilk being funden, the *attachiamente* is relaxed and lowſed. Sumtimes attachiament is of ane mans perſon and bodie, as in actiones of wrang, or criminall cauſes. In the quhilk the perſone of the tranſgreſſours ſuld be firſt *attached*, and gif he be diſobedient, or fugitiue, his gudes and gear, may be *attached*, vntill he find caution to vnderlie the law. Swa commonly, bot not perpetually, *attachiamentum, veleſt bonorum, vel corporis, ſicut arreſtamentum bonorum*, as gif the Crowner can nocht apprehend onie man indited, to *attache* him perſonallie to cõpeir in the Iuſtice aire: then he ſuld arreiſt all his gudes moveable and vnmoveable to remaine vnder ſure pledges. And to be furth cũmand to the King, incaſe he cõpeir not. *l. Malc. Mak. c. 1.* And in criminal cauſes, ſpeciallie in treaſon

the

the perſon or bodie of the defender ſuld be firſt attached,& put in ſure firmãce, vntil he haue tholed ane aſſiſe,quhidder he be quite or foule.I. 2.p.12 c.49.And in civill cauſes the guds and geir, of the defender ſuld be firſt arreiſted.Li.4.c.1.as writtes *Matthæus de afflictis,in conſuetudines Siciliæ.conſtit.Humanitate. Nu.*33. Be the civill Law in execution of decreites,firſt the moveabill gudes perteining to the debtour, ſuld be firſt diſcuſſed,thereafter his lands and immoveabill gudes may be compriſed.Thirdlie the debtes auchtand to him,quhilks are called *nomina debitorum*,may be perſewed and diſcuſſed,L.*a Diuo Pio*.15.§.3. *De re Indicat.* Quhilk is conforme to the act of Parliament, quhairby it is ſtatute,that the lands perteining to the debtour ſuld nocht be compriſed,vntill his moveabil guds be firſt ſearched,ſocht,and diſcuſſed.Ia.3.p.5.c.36.

AVERIA.li.4.c.*ſi quis ſederit*.23.c.*quicunque*.31.*aſſ.Reg.Da.c.ſi quis ſederit*41.In the quhilk place it is called *melius animal*,the beſt aucht,from the French,*le meilleur auoir*.Quhilk be the Law is given be the huſbandman to his maiſter,as ane herezelde, and lib.4.c.*quicunque*, 31. *averia* is called *animal:* The quhilk place is *de namatione animalium*,that is of poynding of cattell.

AVVNCVLVS properly is the mother-brother,bot ſumtime cõform to the French maner of ſpeach,it is taken for the father-brother,in Latin *patruus,li.2.c.ſi quis liberum 24.c. deficientibus 34.de iudic,c.Item nota 15 In quibus locis ius ſucceſſionis dicitur pertinere ad avunculum eiuſque liberos quod non eſt conſentaneum iuri noſtro civili, ſi avunculus propriè accipiatur pro fratre matris,quia cognatorum, h.e.conſanguincorum, exparte matris apud nos nulla eſt ſucceſſio.h.e cognati non ſuccedunt aliis,*

B.

BAGIMONT, his taxation of benefices. Ia.3.p.6.c.43.Ia.4.p.3.c. 39.The Pape in the time of K. Iames the thrid, ſend in this Realme ane cardinall and legat,called *Bagimont*,Quha did make ane taxation of all the rentalles of the benefices, that the ſamin micht be knawin to the Pape.To the effect,that quhen onie perſon came to *Rome* ſeikand bulles or richt to onie Benefice fra him, he micht conforme to the ſaid rentall as he pleaſed, ſell the ſamin for ſameikle Silver,or Golde, as he thocht maiſt proffitable.Quhilk taxation is grounded vpon the Canon Law,in the *Extrauagant.ſuſcepti regiminis,lib.6.*

BAIRMAN.*Vid.Dyvour.*

BALLIVVS, ane French word,*Bailliſ*,Ane baillie or judge,*li.*1. c.10.c.31. quha hes ane ordinar power and juriſdiction. *Nim balliuus ſine iudex non poteſt eſſe arbiter.li.2.c.4.Ballia*,in Latin,*provincia*,ane baillerie or juriſdiction.li.1.c.7.c.18.ſtat.2.*Rob.Br.c.4 c. Robertus.28.Dicitur autem Ballivus a Baall,h.e.domino,quia balliui dominantur ſuis ſubditis, quaſi eorum magiſtri & domini, Rebuffus in conſtit.regias,de ſentent. execut. art.7.gl.1.* And in the Checker compts, the Baillies of Burrowes are properlie called

led *ballini*. Quha be the Lawes of this Realme, makis compt zeirlie in the Checker, of their burrow mailles, as ane part of the Kingis annexed propertie, and alſo of their commoun gude, quhilk ſuld be imployed in the neceſſar affaires of the burgh. And likewaies in the checker, compt is maid of the Kingis propertie, be ſik as ar called *Ballivi Regis*, and intromettis with his rents: quhais comptes ar called *computa Ballivorum ad extra Scil. Extra Burgos*: And ar improperlie called *Ballivi*, being Chalmerlanes input, and out-put be the Comptroller, for quhom he ſuld be anſwerable. Mair-over, in the Checker compt maid *per rotulos*, is quhen the Compter is charged in his compt, conforme to ane former compt, rolled of before: And *computum extra rotulos*, is quhen the compter is charged in his oneration, be ony precept direct be him ſelfe, or be ony intromiſſion maid bee him of the Kingis rentes, before the making of his compt, or with ony dewtie ſilver, or vther thing perteining to the King extraordinarlie, and not zeirlie, as ane parte of his patrimonie.

Computum ballivorum id extra.

Computum per rotulos & extra rotulos

BANRENTES, *Banretes. Ia. 1. par. 7. c. 101.* In the quhilk place, it is manifeſt, that Ban-rent is ane kinde of eſtaite, greater and mair honorable then Barronnes: For the Barronnes ar permitted to chuſe their Commiſſioners, to be ſent for them to Councell and Parliament, to propone all and ſindrie needes and cauſes, perteining to the commounes, in the Parliament, or generall Councell: But the Ban-renes ſuld be warned be the Kingis ſpeciall precept, to compeir perſonallie in the Parliament or Councell: In ſik maner, as Biſhoppes, Earles, Lords, Abbots, Priores, vſis to be ſummoned. This worde is commonlie vſed in the Engliſh lawes, and in ſindrie lawes of vther Cuntries. *Cuia. l. 2. de Feud. Tit 7. de nova fidelitatis forma. Boerius in deciſiones Burdegalenſes, Tract. de authoritate magni Conſilij. Guido Pape queſt. 614. & 320. ius Normand. l. 5. c. 2. Nu. 7. Zaſius de Feud. Tit. qui Feudum dare poſſunt.* Some callis Banrents them quha hes Baners rent, and divided in ſindrie partes. Vthers callis them quha hes therent or zeirlie dewtie of ane Barronne. And ſik-like, ſome vnderſtandis them quha bearis the Kingis Baner in his hoiſt and armie: quhilk office and honour, perteinis heretablie, and allanerlie, to the Conſtable of *Dundie*, the Kings Baner man. But all men when they ar belted and maid Earles, ar called Barronne Banrent, and Lorde of our Soveraine Lordis Parliament: Quhairby it is manifeſt, that the ſaide dignitie is commoun to manie, and nocht proper to ane man: And therefore ſeeing *Zaſius* in the place foreſaid, writis, that Ban-rent is ane dignitie concerning weir-fare: I think in my opinion, that Banrents ar called *Chevaliers* of armes, or Knichtes, quha for obteining of greate honoures, dignities, or riches, hes power, or priviledge granted to them be the King, to raiſe and lift vp ane Baner, with ane compainie of men of weire, either horſe-men, or futemen, quhilk is nocht leſum to ony Earl or Barronne, without the Kingis ſpeciall licence, asked and obteined to that effect: As *Henrie Paſquier Advocat lib. 2. des recherces de la France. 639. Fol. 100.* proues be money and ſindrie argumentes of the Hiſtorie

of *France*. And Doctour *Thomas Smith*, ane learned man, in his buike, anent the commoun weill of *England*. *Lib.1.c.17.*

Sayeth that Knightes, Banrentes, ar maid in the fielde, with the ceremonie of cutting of the poynt of their standerd, and making of it as it were ane Banner, they being before Bachellers, ar now of ane greater degree, allowed to display their Armes in ane Banner, in the Kingis hoist and armie.

BANNITVS, Banished for onie crime or vther cause. *Bannum*, signifies ane trūpet, in latin *tuba*, as writis *Alciatus l.2.parer.c.2.ex Procopio, l.4.belli Persici*. And be the common vse and consuetude of this Realm, quhen onie persō is banished, or put to the horne, the same is done with three blastes of ane horne, or ane trumpet. And for that effect, it is statute and ordaned that the Kinges maire, or seriand sall haue ane horne and wand. Ia.1.p.7.c.99. for with the horne he denuncis men rebelles, and with the wand, he receivis them to the Kingis peace, quhilk therefore is commonlie called the wand of peace. *An Bannitus possit impunè, offendi in corpore & bonis. vid. Chessanaum in consuetud. Burgund. R.2.S.1.ver. confiscationis. Nu.7.cum seqq.*

BARO, Ane Barronne. *Zasius de Feud. Tit. qui feudum dare possunt*, writes conforme to *Cornelius Tacitus*, *In Libro de Germania*;

Dux That *Dux*, or ane Duke, is the Governour of ane Province, or Armie, *Comites*, or Earles, ar they quha ar assessoures to the Duke or Prince. SWA called *a comitando*, because they accompanie the saidis

Comes Dukes, and never passis out of their presence.

Marchiones, ar Marquesses, Wardaines, or keipers of the Bor-

Marchio doures: For Mark, Marche, in Latine *Limes*, and *Mark-graue* in Dutche, is *Comes Limitaneus*. And all *Marchiones* dwelling on the Bordoures, or Marches, of the Cuntrie. As in this realme the Earldome of *March*, quhilk perteinis to OVR SOVERAINE LORD, As ane part of his annexed propertie. Bot *Comes Martialis*, or Earle Martiall,

Comes Martialis. is ane man of dignitie or jurisdiction, *a marte, vel bello*: Because the jurisdiction of weir-fare perteinis to him. *Alciatus libro de singulari certamine. c.32.* Affirmis, that like as the Earle is inferiour to ane Duke, swa ane Barronne is inferiour to ane Earle: And that *Baro*, cummis fra the Greeke word *βαρυς*, *grauis*, wise, graue, prudent, and discreit: Bot contrarie wise, *Petrus Pithœus. Lib.1. Adversariorum* writis, That *Baro* signifies ane baird, fuile, or vn-wiseman. Quhais opinion, I cannot gudlie approoue.

Baldus in Cap. Innotuit de electione, definit Baronem, vt sit quisquis merum mistumque habet imperium in aliquo castro vel oppido, ex concessione principis. In this Realme he is called ane Barronne, quha haldis his landes immediatlie in chiefe of the King, and hes power of pit and Gallous.

BARRATRIE.

BARRATRIE, or *Barrataria*, ane kinde of Simonie, ſpecialliein obteining the richt of benefices. *Socinus* reg. 55. *Baldus in conſilio* 21. *Part.* 5. For all men paſſand to *Rome* and byeand benefices commitis *Simonie*, and are called *Barratoures*. Be quhome *Barratrie* is committed, and quhat is the paine theirof, it is manifeſt be the actes of Parliament. It is ane Italian word, and be the *Italiane* interpretours of the civill Law, *Barrataria*, is quhen ane Iudge corrupted be buddes (ſik as gold and ſilver) judgis wrangeouſlie, *Petrus de Raven. ſingula.* 156. and ſwa doing ſellis Iuſtice for meid and profite, and makis his office readie to be boucht be him, quha will give maiſt theirfore. *Angel. de Syndicatu.* Nu. 4. For the quhilk crime he may be deprived, and ſharpelie puniſhed. *Bartol. 1. l. Mœuia. 13. §. 1. nu. 2. de. annu. legat.* And likewaies *Barrattours* in the Lawes of *England*, ſuld nocht be ſuffered to make ſute, or to giue judgementes or pronunce ſentence or domes, anno. 3. *Edward.* 1. c. 32.

BASTARDVS, in French *Baſtard*, ane barne vnlauchfullie gotten outwith the band of Mariage. Quhilk word is barbarous, and (as I ſuppone) na reaſone can be given quhairfore it is ſo called. Bot *Gabriell Paleotus*, in his buik *de nothis, ſpuriiſque filiis.* c. 18. alleagis it to cũ fra βαστάρις quhilk ſignifies ane huire, or common woman: Be reaſon that baſtardes are commonlie gotten & procreat with ſik weemen, in Greeke he is called *nothus*, for νοθία ſignifies that part of the fathers gudes and geare, quhilk be the law of the *Athenians* leaſumlie micht be given be the Father to his baſtard ſonne, extending to the ſumme of *mille drachmæ*, & theirfore νόθον was called all that was not trew or lauchful, as writis *Budæus in Pandectas.* And ſwa νόθος cummis fra νὺ, *privativa particula*, & θεῖον h. e. *diuinum, teſte Suida.* Becauſe he wantis that quhilk is godlie & lauch full, that is ane honeſt and lauchfull birth, or parentage. And ſwa νόθος *dicitur qui non ſit legitimus*, to the quhilk their is na proper Latine worde correſpondent, as *Quintilianus* teſtifies lib. 3. c. 6. Nevertheles, he is commonly called *Spurius*, for in. l. 1. ff. *de poſſes. contr. tabul. Spurij dicuntur* παρὰ τὴν σποράν *h. e. ſtatione, vel ſeminatione, eaque vaga, & promiſcua, vbi doctiores* σποράδην *legunt, quaſi ſparſim concepti*, like as they are called *vulgò concepti. l. in adoptivis. 14. de ritu naptiarum.* Likewiſe *Spurius* was the proper name of ane man amangis the *Romaines*, as *Titus*, or *Caius*, & was writ ten with twa letters *Sp.* and likewaies they quha had na certaine Father, was deſigned with the ſaids twa letters, S. and P. And ſwa be commoun vſe and conſuetude, *Spurij dicebantur ſine patre*, as writes *Plutarchus in problematibus*, becauſe their Father and mother nocht being lauchfullie maried, they haue na certaine father: *quia pater dicitur quem legitimæ nuptiæ demonſtrant. l. 5. ff. de in ius vocand:* And it is alike to haue na Father, & to haue incertaine father, as we ſay, he quha will haue monie Gods, hes na God. *Poſtremò Blondus lib. 8. Romæ triumphantis, is (inquit) qui illegitimè natus eſſet ex concubina vel ſcorto, contumeliæ cauſa, ſpurius dicitur, eo quod Sabini, mulsebre pudendum ſporon appellarunt: hæc ille. Inhoneſto originis genere in lucem editos, infami & inhoneſta appellatione notare voluerunt veteres.* And

Nothus.

Spurius.

Sporon. ſpare.

that part of weemens claiths, ſik as of their gown, or petticot, quhilk vnder the belt, and before, is open, commonlie is called, the ſpare. As concerning the ſucceſſion of baſtards, thir ſchort rules are to be obſerued, conform to the Law, and practicque of this Realm. Firſt na baſtard, nor na perſone, nocht procreat, and gotten in lauchfull mariage, maie onie waies be lauchfull aire and ſucceſſour to onie of our Soueraine Lordis lieges. *lib. 2. c. in cuſtodijs 50.* for be the law of God *Iſmaell* being baſtard, gotten vpon ane bound woman *Agar*, micht not be aire to *Abraham*, with *Iſaak*. *Geneſ. 21. 10*. Becauſe all richt of ſucceſſion is be reaſon of bluid, and *conſanguinitie* of the father ſide, quhilk is called *ius agnationis*, and theirfor ane baſtard, quhais father is incertaine, be the law is vnderſtand, be reaſon of bluid to be ſib to na man, & nane to him, *& vbi nullus eſt pater legitimus, ibi nulla eſt agnatio aut ſucceſſio ratione agnationis.*

De Succeſſione activa, & paſiva Baſtardorum, Baſtardus non poteſt eſſe hares.

Secondlie the bairnes maill, or female, lauchfullie gotten be ane baſtarde, with ane lauchfull maried wife, ſucceids to him as righteous and lauchfull aires, in his Lands, gudes and geare, in the ſamin maner, as gif their father had bene gotten and borne in lauchfull band of mariage, *quia filius eſt hæres legitimus, quem nuptiæ demonſtrant. lib. 2. c. incuſtodiis 50.*

Legitimi baſtardorũ liberi, ipſis ſuccedunt.

Thridlie gif the lauchfull bairne maill or femaill of ane baſtarde, ſucceides to him, and thereafter deceaſis without lauchfull aires gotten of his awin bodie, or without lauchfull brother or ſiſter: and lauchfull teſtament and latter will maid be him, all and haill his lands, guds and geare, nocht being diſponed and annalied be him in his lifetime, aucht and ſuld perteine to the King, be the priviledge and richt of his Crown: Becauſe, as ſaidis, there is na richt of ſucceſſion in this Realme, be the Mother ſide, and the ſonne or dauchter of the baſtard deceaſand as ſaid is, hes na perſone ſib to him be his father ſide: And ſwa all richt of ſucceſſion ceaſand baith vpon the mother and father ſide, *tam ratione cognationis, quam agnationis*, the King be reaſon of his Crown, is vniverſall ſucceſſor to him in his lands, guds and geare, as *ultimus hares*. Fourtly, an baſtarde being *legitimat*, or not *legitimat*, may in his lige pouſty and induring his lifetime, annalie and diſpone his landes, gudes and geare moveable, and vnmoveabill, to quhom he pleaſis, in the ſamin, forme and maner as onie perſon gotten in lauchfull bed may doe bee the Lawe.

fiſcus ſuccedit filio, vel filiæ, Baſtardi.

Baſtardus res ſuas alienare poteſt, teſt. tamquam liber earum dominus.

Fiftlie, all gudes moveabill and vnmoueable of ane perſon borne baſtard and deceaſand baſtard, without lauchfull aires gotten of his bodie, and na diſpoſition theirof maid in his time, perteinis as eſcheite to the King, be reaſſon of the richt of his Crown. *lib. 2. c. quari autem. 51. leg foreſt, c. ſi baſtardus. 50. de. iudic. c. ſi baſtardus. 54.*

fiſcus ſuccedit baſtardo.

Sextlie. Ane baſtarde being naturalized or *legitimat* bee the King vnder the great ſeal, be the practicque now vſed and obſerved, hes allanerlie power to make teſtament, diſpone his moveable gudes and geare

Baſtardus legitimatus poteſt teſtari legitimè

geare, and nominate executors, conforme to the Law of this Realme: be the quhilk law, na man lauchfullie, or vnlauchfullie gotten or borne, may make ony diſpoſition in his teſtament, bot of his moveable gudes allanerlie. For na man vpon his death-bed, or in his latter will, without conſent of his aire, may diſpone ony part of his heretage. *Lib. 2. cap. Poteſt 21. cap. Cum quis. 36.*

Baſtardus legitimatus poteſt teſtari legitimè.

Seventhlie, gif ane baſtard legitimat and rehabled in his life-time, makis ane teſtament lauchfullie: The King thereby is excluded fra all richt and intromiſſion with his moveable gudes: Bot gif he makis ane teſtament, quhilk is null and vn-lawfull: Or gif hee makis na teſtamente: The King be reaſon of baſtardrie, ſucceedis to him in all his moveables, and vn-moveables. For in this caſe, the effect and power of the legitimation ceaſis, and hes na operation.

Teſtamentum illegitimè factum non excludit fiſcum.

Auchtlie, quhen ane Baſtard deceaſis without ony lauchfull teſtament maid be him, or not havand aires lauchfullie gotten of his bodie: The King, be his Theſaurar, or ony vther havand gift and power fra him, may intromet with all the moveable gudes quhatſumeuer, perteining to the Baſtard, the time of his deceaſe, and not diſponed be him in his life-time, as eſcheit perteining to his Hieneſſe, be reaſon of his crown and Kinglie power.

Bona mobilia Baſtardi fiſco deſeruuntur.

Ninthlie, Sick-like all landes and tenementes perteining to the ſaide Baſtard, the time of his deceaſe, and halden immediatlie of our Soveraine Lorde in chiefe, after his deceaſe, perteinis to the King, and the propertie thereof, be deceaſe of the Baſtard, and be reaſon of eſcheit of Baſtardrie, belangand to the Crowne, is conſolidat with the ſuperiority in the Kingis perſon; in ſik forme and maner, as gif the Baſtard in his life time, had maid reſignation thereof, in the Kingis handes.

Bona immobilia D. N. tenta, fiſco inſeruntur.

Tenthlie, Concerning landes and heretage, perteining to ane Baſtard, not halden of the King, bot of ane vther ſuperiour, Spiritual, or Temporall; the King hes richt of preſentation: Be the quhilk, after the deceaſe of the Baſtard, he may preſent ony perſon quhom he pleaſis, as heretable tennent to the Baſtardes immediat ſuperiour, be his letter, vnder the quarter ſeale, bearand: That for-ſa-meikle, as *N.* borne Baſtard, and deceaſand Baſtard, without ony aires, lauchfullie gotten of his bodie, and na lauchful diſpoſition maid be him in his life-time, had the landes called *B.* perteining to him, in heritage, halden immediatlie of the ſaid ſuperiour: And his Hieneſſe being willing not to prejudge the ſuperiour, anent his ſuperioritie: Therefore preſentis to him, ſik ane man, chargeing the ſuperiour to receiue him, and giue him ſik infeftment of the landes, as the vmquhile Baſtard had of him of before.

In alijs bonis immobilibus Rex habet ius præſentationis.

BERTHINSEK, Or *Birdinſek.* Be the Law of Birdinſek, na man ſuld die, or be hanged for the thieft of ane ſcheepe, ane weale: Or for ſa-meikle meate as he may beare vpon his backe in ane ſeck: Bot all ſik thieues, ſuld pay ane ſchiepe, or ane Cow, to him in quhais lande hee is taken: And mair-over, ſuld be ſcurged. *Lib. 4. c. De Thurpanan ſeca. 14.*

quoniam attach .c.per conſtitutionem.44. Aſſ.Reg.Da.c.1.In fine. Stat.Alex. c.de Berthinſek.19. Quhilk is conforme to the Civill, and Canon Law. *Nam omnia delicta & maleficia æſtimantur voluntate, & propoſito delinquentis. L.qui iniuriæ.53.In prin.ff.de furtis. L.1.ff.de Var,& extr. Crim. Ideoque ſi quis neceſsitate famis ſedandæ,egeſtate,aut paupertate coactus,rem alienam contrectat, quia non adeſt animus furandi cupidus,excuſari poteſt.c.ſi quis. Extr. de Furt.Non enim factum,ſed cauſa faciendi inſpicitur.l.Verùm.39.ff.de furtis. Et vulgo dici ſolet,neceſsitatem non habere legem.L.Non ſolum § Vlt.de excuſationib.Tutor.*

BLVDVEIT, VYTE In Engliſh is called *Iniuria,vel miſericordia.* Ane vn-law for wrang or injurie, ſik as bloud. For they quha ar infeft with Bludueit, hes free libertie to take vp all vnlawes or amerciamentes of Court, for effuſion of bloud: And to hald Courtes therevpon,and to apply the ſamin to their awin vtilitie and profite.

BONA PATRIA, *Lib.1.c.ſi verò.29.* Ane aſſiſe of cuntrie-men, or of gud nichtboures: Some-times it is called *Aſsiſa bonæpatria,* quhen twelue, or maa men ar choſen furth of ony part of the Cuntrie, to paſſe vpon Aſſiſe, quha ar called *Iuratores*, becauſe they ſuld ſweare judicialie,in preſence of the partie, ane ſolemne aith. *Lib.1.c.Poſt hoc.14.* Iam 1. p.13.c.138: In this maner following. We ſall leill ſuith ſay, and na ſuith conceale, for na-thing be may, ſa far as we ar charged vpon this Aſſiſe, be God himſelfe,and be our part of Paradiſe,and as we will anſwere to God,vpon the dreadfull day of judgement.

Iuratores.

The aith of the aſſiſors.

BONDAGIVM,or *Villenagium*,ſlaverie,or ſervitude: For *bondi, natiui*,and *Villani*,ſignifies ane thing. *Lib.2.c.Conſequenter 13. cum ſeqq. Bondi*, be reaſon of their band and obligation, as bound and obliſhed men. *Natiui*,be reaſon of their nativitie and birth,as borne men within the land, *Quaſi aſcriptitij glebæ*, That is depute, deſtinate,or ordained be their maſter,to dwel and remaine vpon the land,for keiping and labouring thereof. *Lib.1.c.Pluribus 14* And therefore vtherwaies ar called *Villani*,be reaſon of their office: in ſa far as they haue the cure of Villages, and landwart husbandrie committed to them. *Bondagium per anteriores crines capitis, quoniam attach.c. de brevibus.31.15.* quhen ony free-man, renuncis his libertie, and makis himſelfe ane bond,or ſlaue to ane greate man in his Courte,and makis tradition,& delivering of him-ſelfe,be giving ane grip of the haire of his forehead: to the effect he may be mainteined and defended be him thereafter. The quhilk bond-men,gif they reclaime to their libertie,or happen to be fugitiue fra their maiſter, may be drawen back againe be the Noſe, to ſervitude: Fra the quhilk the *Scottiſh* ſaying cummis,quhen ane boaſtis and menacis to tak ane vther be the Noſe. And it is leaſum to ony man to ſell his libertie; bot gif hee dois, he may never recover the ſamin. *Aſſiſ.Reg .Da.c. Quilibet 12. quoniam attach.c.quilibet, 56.* To this the Civill Law is conforme. *Nam his qui ad precium particidandum ſe vænundari paſsi ſunt, ad libertatem proclamare non licet. L.1.ff.quib.ad lib.Pitrus Pithœus.li: 1.Adverſariorum*, makis

Villani.

Bondagium per anteriores crines:

Bondi. Natiui.

men-

mention of ane kinde of adoption, *per comam ſiue capillos*, quhen ony perſon tuike ane grip of ane vther mannis haire, and did cut it: Quhairby the ane, became the Father adoptiue, & the vther, the Sonne adoptiue.

BORGH, ane Cautioner, pledge, or ſovertie, Iam. 3. Par. 14. c. 99. In Latine, *Fide-iuſſor. vide* Free Borgh. *vid. Plegius.* Borgh of Ham-hald. *de Maritag. c. Sciendum. 17.* Ane Caution or ſovertie vſed in byeing and ſelling, quhilk the ſeller findis to the byer, to make the gudes furth cummand, as his awin proper gudes, and to warrand the ſamin to him. For it is ſtatute, that na man ſall bye ony geare, except the ſeller thereof finde him ane lauchfull pledge: quhilk is called Borgh of Ham-halde. And gif it, ſall happen the gudes ſauld and bocht, to be challenged bee ane vther, and the ſaide pledge cannot finde him, for quhome he is pledge, to relieue him of the ſaid challenge: He ſall pay to the Challenger, the triple of the thing challenged: And aucht Kye to the King, as ane vn-law. And gif he quha fande the ſaid pledge, relieuis him not from the ſaid damnage, he ſalbe baniſhed the realme. *Lib. 1. c. Statuit etiam 19. St. Alex. c. Statuit etiam 13.* For generallie the Cautioner hes gud action, contrair the principall, for his reliefe. *Lib. 3. ca. 1, In fine.* And ſiklike within Burgh, the like caution ſuld be found in byeing and ſelling of all merchandice, except meate and drinke, and vther thinges of ſmall conſequence. *Leg. Foreſt. c. Nullus. 48. Et de iure civili venditor per evicti onis præſtationem, cogitur ſervare emptorem indemnem, eodem modo ac ſi dominium nactus eſſet. L. ex empto. N. in prin. ff. de actionibus emp. vid. Hamhaldare. vid. Hamſuken.* Mair over, gif ony man becummis ane furth-cummand borgh for ane vther, to make him furth cummand as ane haill man, it is ſufficient, gif he produce him perſonnallie, haill and ſounde before the judge, in lauchfull time and place. Bot gif he be pledge for ane vther, that he ſalbe anſwerable as law will, he man ſatisfie for him in court, and to the partie, to quhom he is pledge, in all thinges, as the principall ſuld haue done. *Quoniam attach. c. vbi aliquis 11.*

Borgh of Hamhald.

BOTHNA, *Buthna, Bothena. L. 4. c. Si quis namos. 30.* appearis to be ane Parke, quhair cattell ar fed and incluſed, *vt in Libro M. Alexandri Skene, fratris mei germani, quondam in ſupremo Senatu Advocati.* Quhilk is confirmed be *Hector Boetius l. 7. c. 123. Nu. 35. Cum ſcribit maritimam Theſſaliæ partem à vectigali, quod Regiis procuratoribus ab incolis in annos pendi ſolitum erat, cum gregum multitudine abundarent, Buthquhaniam appellatam, eſt enim, quhain, idē quod vectigal, priſca Scotorum lingua: et Buth, ouium collectio: hæc ille.* And it is manifeſt, that the place in the quhilk the zowes ar incloſed quhen they ar milked, is commonlie called ane Bucht. Sicklik *Aulus Gellius l. 11. c. 1*, writis that *Italy* is ſo called a *Bubus*, becauſe ιταλοι in the auld *Greek* language, ſignifies Oxen, of the quhilk there was great aboundance and multitude in *Italy*, quhilk is confirmed be *Paulus Vaneſridus lib. 2. c. 24. Italia (inquit) ab Italo, Siculorum duce, qui eam antiquitùs invaſit, ſiue ob hoc Italia dicitur, quia magni in ea boves, h. e. Itali habentur, ab eo namque quod eſt Italus, per diminutionē, vna litera addita, altera immutata, vitulus*

Italie.

appellatur. Item Bothena. Stat. Wilh. c. 11. Signifies ane Barronnie, Lordſhip, or Schireffedome; as is manifeſt, *Ex Libro Sconenſ. ca. 99. Aſſiſ. Regis Dauid: Et Dominus Bothenæ*, is the Lorde of the Barronnie, lande, or ground: *Leg. Port. ca. 1. in Libro M. Willielmi Skene, fratris mei, Commiſſarij Sancti Andreæ. Pag. 149. c. 79. Item*, It is ſtatute and ordained, that the Kingis Mute, that is, the Kingis Court of ilk Bothene, that is, of ilk Schireffedome, ſalbe halden within fourtie daies. *Aſſ. Reg. Da. ca. 6. in Libr. quondam M. Roberti Carbraith. I. C. Doctiſſimi.*

BOTE, Ane auld Saxon worde, ſignifies, Compenſation, or Satisfaction: As man-bote, thieft-bote; And in all excambion, or coſſing of landes or geare moveable: The ane part that gettis the better, giuis ane Bote, or compenſation to the vther. Quhairof there is ane example *in § Si familiæ, inſtit. de Offic. Iudic. & in § quædam actiones. Inſtit. de actionibus.* Ane man-bote is aſſithment for the ſlauchter of ane man. Kin-bote, for the ſlauchter of ane Kinſ-man. Thieft-bote, is quhen ony man agries with ane thiefe, & puttis him fra the Law. *I. 5. 12. Iul. Par. 1. c. 2.* Or quhen ony ſellis ane thiefe, or finis with him, for thieft-dome done, or to bee done. *Ia. 1. Par. 13. c. 137.*

Man boate. Kin. boate. Thieft-boate.

BOVATA TERRÆ, ane oxen-gate of land. *Li. 4. c. Si quis ſederit. 23.* Quhilk in ſum buikes, is wrangeouſlie written, *Davata terræ.* The Lordes of the Seſſion be their decreete. 18. Iulij. 1541. Eſteemed and modified ane Oxen-gate of land, to twentie ſhillinges in all dewties zeirly. Bot in this I finde na certaine rule; For ſome land is mair fertill, and vther mair barren: Alwaies, ane Oxen-gate of land, ſuld conteine threttene acker: And four Oxen gate, extendis to ane pound land of auld extent, conforme to the decreetes given be the Lordes of the Checker. 11. Mar. 1585. *Patrik Mony-penny* of *Pilrig*, and vthers, contrair *Adam*, Biſhop of *Orknay*. And at the inſtance of *Iohn Creichtoun* of *Bruntſtoun*, contrair *Iohn Fentoun*

BREVE, Ane commoun worde in the Lawes and practicque of this Realme: And alſo in the Civill Law. *Lib. 1. C. De exactorib. Tribut. Lib. 10. leg. vlt. c. de conveniend. fiſci. Debitorib. Lib. 10.* Quhair, in the Gloſſe, it is called *Schædula*, ane ſchort compendious write: Like as all Brieues ar conceived in few words, and ar allwa called *Breuicula.* And in *Rubr. C. de ſentent. ex periculo recitand. Alciatus Lib. 1. Diſpunct. cap. 21. Et Iacobus Cuiacius, Antonio Contio repugnante, Legunt ex Breviculo, id eſt, ex ſcripto breviori formula concepto.* Becauſe the ſentences and decreetes of Ordinar judges, ſuld be red and pronunced in writ. *Breve teſtatum*, is ane writ or inſtrument, ſubſcrived be ane publick Notar: Or be twa witneſſes, quha ar called, *pares curtis, vel curiæ. h. c. Conuaſſalli*: Quha baith halds their land of ane ſuperiour. *Cuiacius Lib. 1. & Lib. 2 Tit. 3. De feud.* In the auld Lawes of this realme, diverſe and ſindrie Brieues hes bene vſed and wounte, quhairof mention is maid. *Quon. attach. c. de brevibus 31.* And in ſindrie vther places. Bot ſeven formes of Brieues allanerlie, are nowe commonlie vſed. The firſt, the Brieue of Mortanceſtrie. The ſeconde, the

Breue teſtatum. Brieues now in vſe.

Brieue

Brieue of tutorie. The thrid the brieue of Idiotry, the Fourth the brieue of *Terce*. The Fifth the brieue of line, or lineation of landes, and tenementes within Burgh. The Sext the brieue of diviſion. The Seventh, the brieue of perambulation. Quhairof the three firſt brieues are anſwered, and retoured againe to the Chancellarie. And the vther foure receiuis na retoured anſwer. The cauſe of the diverſitie dependis vpon the forme of the brieues direct furth of the Chancellarie. Becauſe the three firſt brieues in the end of ilke ane of them conteinis an command to the judge, to quhome they are direct, to ſend back againe his anſwere to ilke point of the brieve. And the remanent foure brieves hes na ſik command; And theirfore requiris na anſwer.

BREVE *de diuiſis faciendis*, Is the briefe or ſummonds of cognition, or moleſtation anent the propertie and commontie of Landes, anent the bounds, meithes and marches theirof, betuixte Neighboure, and Neighbour. Quhilk be the new acte of Parliament, ſuld be decided be ane aſſiſe, before the Schireffe, and his deputes. Ia. 6. p. 11. c. 42. It maie be like-waies called the Brieue of diviſion, or of perambulation, or onie vther concerning the marches of landes, *lib. 2. c. dicitur. 74.*

BREVE *de nova diſſaſina, quo. attach. c. de brevibus. 31.* Is the brieue or ſummondes of ejection, or ſpuilzie. For *diſſaſitor*, is he quha ejectis onie man furth of the poſſeſſion of his landis, without ordour of the law, as writis *Iohn Raſtel. verb. diſſaſitor*. And *nova diſſaſina*, ſignifies alſwa ſpuilzie, maiſterful, wrangous, or violent ſpoliation & away taking of moueable guds and geare. 22. March. 1547. *William Lindſay* contrair *Alexander Chene. Molinæus in ſtilo curiæ parliamenti. part. 1. c. 10. c. 18.* affirmis that *nova diſſaſina*, is that quhilk in the civil lawe, is called *interdictum vnde vi.* And comprehends alſo *interdictum vti poſſidetis*. And in the Law of Normandy, *li, 8. c. 3.* it is called *interdictum recuperandæ poſſeſſionis, vid. diſſaſina.*

BREVES pleadable, *breue placitabile*, ar all ſik brieues, quhilkis are perſewed and defended be ane ordinar forme of proces before ane competent judge, at the inſtance of ane perſewer againſt ane defender. For it is ſtatute, that na man ſall be ejected furth of his land or tenemente, quhairin he alledgis him to be veſt & ſaiſed, bot be an brieue pleadable or ſum vther brieue accordand theirto, & that the ſaid perſon be lawfully ſummoũd, to anſwer vpõ his heritage, at ane certaine day & place. Stat. 2. *Rob. Br.* c. Item. 25 quhilk is conforme to the actsof Parli. Ia. 3. p. 6. c. 41.

BREVE *derecto*, the brieue of richt was vſed before the Iuſtice generall and his deputes in deciſion of the ground, richt and propertie of lands, and reduction of infeftments, the quhilk forme of proces is declared at length, in the firſt buike of *Regiam Maieſtatem*, and in *quo. attach. c. de brevibus. 13.* & be the Lords of councell and ſeſſion is decerned nocht to haue bene, nor zit to be thir mony zeires in vſe, & theirfore they find them ſelfe, conform to the inſtitution of the Colledge of iuſtice, and juriſdiction granted to them, to be judges competent in all cauſes of heretage, *vlt.* Februar. 1542, *Patrick Weemes* contrair *Forbes* of *Reres*.

BREVE

BREVE *de morte anteceſſoris*, the brieve of *Mortanceſtrie. l. 2. c. generalia. 25.* Or the brieue of ſucceſſion, or of conſanguinitie, *de iudicib. c. Natura. 158.* Or *breve inquiſitionis. Stat. Rob. 3. c. 1.* Or the brieue of inqueſt. I. 4. p. 6. c. 94 Albeit all brieues are inquiſitions, becauſe they are determinat *per inquiſitionem patriæ, de Iudicib. c. cum quis. 152*, or the brieve of recognition, *breue recognitionis Stat. 2. Rob. Br. c. Item. quia. 23.* It is the maiſt neceſſar common and profitable brieue, or inquiſition that is vſed be the lieges of this Realme, quhairby ane deſiris, tobe ſerved and retoured, as narreſt and lauchful aire to his father or vther prediceſſour. This brieue is raſed furth of the Chancellarie and perſewed be ane appeirand aire of perfite age, for recovering of his landes, furth of his ſuperiours handes: togidder with all the proffites and commodities theirof. *leg. foreſt. c. et ſi hæres 71.* The raiſer of the brieve at the ſamin time ſuld find caution to perſew and follow the brieve, and his clame conforme theirto. *lib. 3. c. generalia. 25.* Be the auld law of this Realme, the Iuſtice generall and his deputes haueand juriſdiction nocht onelie in criminall cauſes, bot alſo in civil actions, was judg competēt to the ſervice of this brieue. *quō. attach. c. de brevibus. 31.* Bot now the ſamin is ſerved before the Schireffe, Stewart, baillie, or onie vther judge hauand power and juriſdiction. *Stat Rob. 3. c. 1.* Or before judges delegat be commiſſion, granted be the Lords of Councel, for the ſerving of the ſaid brieve. Ia. 5. p. 6. c. 82. The brieue ſuld be proclaimed vpon fifteene dayes warning *excluſiuè*. That is vpon fifteene daies, nocht comptand the daie of the ſeruice of the brieue to bee ane of them, be ſik perſones, as hes power be their office or commiſſion, to proclaime the ſamin, in ane lauchfull, publick, and convenient place: That is to ſay, in the principall Burgh of the Schireffe-dome, Balliery, or vther place quhair the landes lies: at the mercat croce theirof, and in mer cat time of daie, before twa witneſſes at the leaſt, to the effect that the knawledge theirof may cum to the audience of all parties, havand or pretendand entres theirintill, and theirafter the brieve ſuld be lauchfullie execute and indorſate, be the officiar, executor theirof, and ſtamped with his ſeale or ſignet before the ſamin be preſented in judgement. *Sta. Rob. 3. c. 1. I. 1. p. 9. c. 127. I. 4. p. 6. c. 94. I. 6. p. 11 c. 60. In regiſtro 16.* No. 1537. It is neceſſar and alſo leſum to the Schireffe, or onie vther Iudge of this brieue, to ſūmond certaine perſons maiſt worthy within his juriſdiction to paſſe vpon the aſſiſe, and that vpon the ſpace of fifteene daies, or zit gif he pleasis vpon ane ſchorter time, and gif they be preſent in the tolbuith un-ſummoned, it is leaſum to the Iudge to compell them to paſſe vpon the ſaid inqueſt. Ia. 4. p. 6. c. 94. and all ſik perſones ſummoned and nocht compeirand, ar charged at the barre and diſſobeyand, ſuld bee decerned in ane vnlaw and amerciament of court; The brieve beand lauchfullie proclaimed, and the perſons of inqueiſt like-waies ſummoned, and the daie of compeirance being cum: the perſewer exhibitis & preſentis the brieue dewlie execute and indorſate, in judgement to the Iudge, and deſiris him to cauſe the ſamin be red, and put to the knawledge

the perſewer of the Brieue.

the Iudge.

proclamation.

Indorsation.

Aſſiſe ſuld be ſummound.

Verification of the brieues.

ledge of ane assise: Thereafter the officiar, executour of the said brieue, be his great aith, sall sweare judiciallie, that he did execute the samin brieue, conforme to the indorsation thereof in all poyntes, and the witnesse insert there in till, sall also make faith, that they heard, saw, and bystude, quhen the said officiar did execute & proclaime the Brieue, in sik maner, as is conteined in the indorsation thereof: The brieue and indorsation being swa verified, gif ony person havand entresse, compeiris to defende and object against the brieue, he sulde haue inspection thereof, gif he desiris the samin: And gif he proponis ony relevant exception, declinatour, dilatour, or peremptour: Hee thereby castis and annullis the Brieue, either vntill ane new brieue bee raised againe, or *simpliciter* in all times cumming: vtherwaies, gif he hes na reasonable exception or defense to stop the brieue, the samin sall passe to the knawledge of ane assise, *Quoniam attach. c. de brevibus. 13*

Verification of the brieue.

Defender.

THEN Certaine lauchfull menne maiste worthie, and quha beste knawis the veritie, to the number of Thretteene, or fifteene, ar chosen in judgemente, in presence of the persewer, and defender: Or in presence of the persewer, and in absence of of the defender, knawin to haue entresse, and being lauchfullie summoned, and nocht compeirand, to the said election, to object against sa mony persones, as he may leasumlie stop be the law, to passe vpon the assise: For like as it is necessar, that he be anis summoned: Swa gif he compeiris nocht, being lauchfullie summoned, the brieue suld receiue processe, and passe to the knawledge of ane inquest, at the desire of the persewer, in absence of the defender. *Lib. 3. c. Generalia. 35. ass. Reg. Da. c. sciendum est. 44. lib. 4. c. Si petens. 57.* Quhilkis persones, na lauchfull objection maid against them, suld be received, sworne, and admitted. And therefore ar called *Iuratores. vid. Bona patria.* And gif they, or onie ane of them bee sworne and received, the judge may continue the brieue to ane vther daye, gif he pleasis, and as necessitie requiris: vtherwaies the continuation thereof, is nocht leasum, without the consent of the partie, after the claime is given in; And inquisition taken in the cause, gif the persones of inquest, being weill counselled, and advised, deliveris and seruis *Negatiuè*, in favoures of the defender, and findis the persewer na waies nearest and lauchfull aire to him quha died last Veste, and saised in the Lands acclaimed: In that case the defender dois bruik & joyis the possessiō of the said lands, & the persewer is debarred & secluded therefra. Bot gif the assise deliveris & servis *negatiuè*, as said is, or *affirmatiuè*, in favours of the persewer against the defender, conforme to the claime in all poyntes: This their answere to al and syndrie the poinctes of the brieue, sealed with all their seales, or of the maist part of them, togidder with the seale of the Schireffe, or vther judge closed, and the brieue inclosed therein (to the effect the same may be consented with the answer) is sent back & retoured to the chancel-

Ane assise is chosen.

Continuation of the brieue.

the claime Service negatiue.

Service affirmatiue.

Retour.

cellarie, conforme to the Kingis command, conteined in the end of the brieue. *Stat. Ro. 3. 6. 1.* Quhilk therefore is called ane retoure. And it is to wit, that there is twa kindes of retoures, or anſweres maid be the perſons of inqueſt, to this brieue, and retoured to the Chancellarie: The ane is generall, and the vther ſpeciall: The generall is, quhair na landes or tenements ar ſpeciallie acclamed or ſoucht be the perſewer of the brieue: Bot onelie it is deſired, that hee may be ſerved and retoured generallie, neareſt and lauchfull aire to his Predeceſſour: To the quhilk generall claime, ane generall retour is maid, be vertue quhairof the ſaid generall aire, hes gude richt and title to all contractes, obligationes, and reverſiones, and to the moveable aire-ſchip guds, quhilkis perteined to his predeceſſour, and were not diſcharged, or diſponed before his deceaſe, in his liege pouſtie: And ſik-like, he may perſew, and defend quhatſumeever action competent to him, be deceaſe of his ſaide predeceſſour, to quhom he is ſerved air generall. 8. March. 1540. *Iames Scot*, contrair *Blair*: The ſpeciall anſwere and retour is, quhen the perſewer of the brieue, claimis ſpeciall landes, and the perſones of inqueſt givis ane particular & ſpecial anſwer to ilk ſpecial poynt of the brieue. *L. 16. c. ſtatuit Dominus 45.* The quhilk is direct & ſend to the directour of the Chancellarie, to be tryed be him, gif the ſamin be conforme to the direction and ordour of the brieue in all poyntes. Hereit is to be vnderſtand, that the landes conteined in the retour, ar halden immediatlie of our Soveraine Lorde the King, or of ony vther ſuperiour. Gif the lands be halden of the King in chiefe, the directour of the Chancellarie, commandis his Clerkes to direct ane precept, vnder the teſtimoniall of the greate ſeale, called the quarter ſeale, in quhite Walx, to the Schireffe of the Schire, quhair in the landes lyis: commanding him to giue ſaiſing to the perſon retoured, or his Actournay, of the landes conteined in the retour: And to take ſecuritie of the mailles and dewties of the landes, ſa lang as they ar retoured, to haue bene in the handes of the King, or his Predeceſſoures, be reaſon of warde, or none-entreſſe, quhairof ane memoriall is maid in ane buike called, *Reſponde, vid. Reſponde.* Gif the landes retoured be halden of ane vther immediate ſuperiour then the King: The directour of the Chancellarie, directis ane precept, chargeing the ſuperiour, to giue ſaiſing to the perſon retoured, of all and ſindrie the landes conteined in the retour: He dois and to him therefore all quhilk he is obliſhed to do be the Law: Quhilk precept, gif the ſuperiour diſſobeyis, beand required perſonallie, or at his dwelling place, to obey the ſamin: And for verifying thereof, ane authenticke inſtrumente reported to the Chancellarie: Then the ſecond precept, called *Memimus*, is direct to the ſaide ſuperiour, bearand in effect, that the King remembrand, that of before he gaue command to him to giue ſaiſing: quhilk command as zit is nocht obeyed, quhairof he mervailis: And therefore zit, as of before, chargis and commandis the ſaid ſuperiour, to giue ſaiſing to the perſon retoured, of the landes conteined in the retoure.

twa kinds of retours.

Generall retoure and aire.

Speciall retour.

Of landes retoured, halden of an vther ſuperiour.

The thrid precept.

And

And gif ane vther authentick inſtrument be reported to the chancellary for verification of the ſuperiouris diſobedience the ſecond time; The thrid precept called *Furcha*, is direct, commanding him to giue the ſaid ſaiſing, or vtherwayes gif he diſobey, the king certifies him, that he will direct his vther precept to his ſchireffe to giue the ſamin. In the execution of al thir three precepts, it is not neceſſare, that the ſuperiour ſalbe perſonally apprehended. But it is ſufficient gif he be ſa charged in the execution of any ane of them. The thrid precept and charge being likewayes diſobeied, and the ſamin diſobedience lawfully verified, as ſaid is: ane precept is direct furth of the chancellary, to the ſchireff & his deputes of the ſchire within the quhilk the lands retoured lyes. Makand mentiõ, that the King hes giuen command be his vther letters, to N. Barron and his deputes, that he without delay ſuld giue ſaiſing to the perſon retoured, or his attornay of the lands conteined in the retour, quhilk gif he dois not, he commands & chargis the ſchireff, to giue ſaiſing of the ſaids lands with the pertinents without delay, ſaifand ilk mans richt. Quhilk precept being obeyed be the ſchireff, and ſaiſing giuen conform theirto: the ſuperiour who was three times charged of before & refuſed, be reaſon of his diſobedience, tynis and forefaults the ſuperiority of the lands quhairof he refuſed to giue ſaiſing induring his lyfe-time. Quhilk ſuperioritie, ſall pertein to his immediat ſuperiour, quhidder that be the king or ony vther. And after his deceas, his aire being ſerued and retoured to the ſuperioritie of the ſamin lands, recoueris the ſaid ſuperioritie quhilk his father did tine throw his diſobedience. And ſa be the law and practicque of this realme, ane ſuperiour may tyne and forefault his ſuperioritie. Firſt, quhen he is entred and ſaiſed in the ſuperioritie, and being charged be precepts of the Chancellarie, refuſis to receaue his vaſſall, & tennent, ſerued and retoured to the property. In the quhilk caiſe be reaſon of his contempt and diſobedience of the Kings precepts and command, he tynis the ſuperiority, induring his lyfe-time, without any declaratour, or decreit of ane judge. Secondly, quhen the ſuperiour is not entred nor ſaiſed in the ſuperioritie, and is charged be the Lords letters raiſed be his vaſſall, to enter within fourtie dayis thereto, to th'effect he may enter to the propertie. The quhilk fourty dayis being by-paſt, at the inſtance of the vaſſal, he may be decerned be decreit of the Lords of the Seſſion, to haue tynt his ſuperiority, & to ſatisfie the pairtie grieued. *Ia. 3. p. 7. Ca. 57.* And in baith the caiſes foreſaid, the vaſſal, or tennent, ſalbe entreit & hald of the King, or the vther immediate ouer-lord, to him quha contempnandly diſobeyed. Laſt of all, concerning the giuing of ſaiſing conforme to brieues ſerued and retoured before judges, commiſſioners the forme and ordour of the Chancellary aboue written, ſuld be keeped and obſerued, and gif the landes retoured be halden immediatly of the King: the precept of ſaiſing ſuld be direct to the ſchireffe & his deputes. For the Lords auditors of the Checker, ſtatute & ordained, 8. Aug. 1528 that in time comming, the clerke of the Chancellarie, vpon the brieue

The thrid precept.

The fourt precept of the ſchireſe

twa maners of tinſall of ſuperioritie

Precepts of ſaiſing giuen conforme to retoures be commiſſion.

ſerued be an commiſſion, ſall direct the precept of ſaiſing, to the principal ſchireff of the ſchire, & make the reſponſion vpon the ſchireffs head, notwithſtanding the ſaid cõmiſſion, quhilk is ordained allanerly to haue effect, anent the ſeruing of the brieue, & not anent the giuing of the ſaiſing. And true it is, that all ſaiſings paſt vpon precepts of the chancellary, ſuld be giuen be the ſchireff clerk or his deputes, for the quhilk the ſchireffe ſall anſwer. Ia. 5. p. 6. c. 77. Mar. p. 6. c. 34.

BROCCARII, *In ſtatutis gildæ*, ſignifies blockers, brockers, mediatours, or interceſſours in onie tranſaction, paction or contract. As in bying and ſel ling, or in contracting of mariage. In the ciuil law they are called, *Proxenetæ. Lib. 1. et tot. tit. de Proxenetis.*

BVLLION, anefrench worde, *Bilon*, ſignifies vncunzied ſiluer or gold, quhairof ſiluer or gold is, or may be cunzied or ſtriken: ſik as *Balluca*, in greeke χρυσαμμος. *h.e. aurea arena, quæ ex terra effoditur. lib. 1. c. de metallar. l. 11.* In the Engliſh lawes it is called *Plate.* In the acts of parliament of this realme, it is ſtatute and ordained, That merchands ſal bring hame Bullion, quhair-anent the Lordes of checker maid this ordinance, At *Edinburgh* the 10. day of Ianua. 1597. In preſence of the Lordes of checker compeired perſonally, the Proveſt, Baillies & Theſaurar of Edinb. with certaine merchands their nichbors, and gaue in their ſupplication, deſiring the A. B. C. of Bullion to be explained, and an ſolide order to be taken with the expres quantitie of Bullion, quhilk they ſalbe aſtricted to pay preſently, and in all time heirefter. After conſideration quhairof, & conference had at length with them, vpõ the particularities concerning the ſaid matter of Bullion. The ſaids Ll. of checker, with conſent of the ſaids Proveſt and Baillies, for themſelues, and their remanent nichbors, and merchands of this realm; hes ſtatute & ordained, that all merchands ſall inbring & pay in all time comming, for ilke laſt of hydes, ſex ounces Bullion: For ilk laſt of Salmond, four vnce bullion: For ilk 4. hundreth claith, foure ounce bullion: For ilk ſerplaith of woolle, foure ounce bullion. And for all vther waires and merchandice tranſported be them furth of this realme, for ilk ſerplaith of gudes, or ſa meikle as payis ane ſerplaith of fraucht: The ſaid Merchand ſall pay, four ounces of bullion: And vntill mair perfite knawledge, be had of the iuſt quantitie of the ſerplaith, ordainis twa tun fraucht, to be compted to the ſek: And twa ſek fraucht to the ſerplaith. And the ſaid bullion to be in-brocht to the Cuinzie-houſe be the merchandes: And payment to be maid to them for the ſamin, conforme to the act of parliament maid there-anent, vpon the nineteenth day of December, laſt by-paſt.

Ane A. B. C. of the Bullion, ſet downe be the Lordes of Checker, for gudes tranſ-

ported furth of the Cuntrie. And declared be them, to be conforme to the actes of Parliament. 1

And the acte of Checker, abone ſpecified. 13. Febru. 1597.

The laſt of drinking beare	ij. ounce burnt ſilver	The laſt of Orkney butter	ij. ounce.
The laſt of Quheate	iiij. ounce.	The laſt of hering	ij. ounce
The laſt of Beare	iij. ounce	The laſt of Salmond.	iij. ounce
The laſt of Malt	iij. ounce.	The laſt of Saipe	ij. ounce
The laſt of Rye, and Rye meale,	ij. ounce.	The laſt of Aſſe.	ij. ounce
The laſt of Killing, Codlinge & Ling---	ij. ounce.	The laſt of Pick and tarre	ij. ounce.
The laſt of Olie	ij. ounce	The laſt of Lint and hempe	ij. ounce

The laſt of Irne	ij. ounce	Ilk three chalder of ſalt	j.ounce
The laſt of Copper contei. 14 ſchippund	ij.ounce	Ilk hundreth of daillet	i. ounce
The laſt of hart hides, dry hides, & ſalt hids	vj.ounc	Ilk laſt of Narvis tallotin	jj.ounce
The tun of wine	j. ounce	Ilk tunne of lead	j. ounce
Ilke foure hundreth of claith	iiij.ounce	Ilk foure chalder of coales	i ounce
Ilke ſeck of ſcheip-ſkinnes contein. 500.	ij.ounce	Ilk three hundreth of drie fiſch	ij. ounce
The ſerplaith of lambskins con. 8000	iiij.ounce	Ilk thouſand ling or killing in peill	vj. ounce
The ſerp. of cunning skins con. 16000.	iiij. ounce	For ilk foure cradil of glaſſe	ij.ounce
Ilk ſerplaith of futtelles, con. 4000	jnj.ounce	For ilk ſeck of wooll contei. xxiiij. ſtanes	ij.ounce
Ilk ſeck of gait skins contein. 680,	ij.ounce	The laſt of wax, con. xiij, ſchip pund	ij.ounce

BVRLAW, *Byrlaw*. lawes of *Burlaw* are maid, and determined be cõſent of nichtbors, elected and choſen be cõmon conſent, in the courtes, called the *Byrlaw* courts. In the quhilk, coghition is taken of complaints betuixt nichtbour & nichtbour, *lib. 4. c.* The quhilk men ſa choſen, as judges and arbitrators to the effect forelaid, are cõmonly called *byrlaw* men. It is an dutch word, for *baur* or *baurſman* in dutch, is *ruſticus*, an husbandman. And ſa *byrlaw* burlaw, or baurlaw, *leges ruſticorum*: Lawes maid be husbandmen, cõcerning nichtbour-heid to be keeped amangs thẽſelues.

C

CADROV, quherof mentiõ is maid in the act of p. printed. *1568. Ia. 2 4. Au. 1454. c. 41.* wrangouſly, for *Cadzou*, becauſe I turth of the barony of *Cadzou*, an zeirly penſion or annuel-rent of 26. pound 13. ſchil. 4. pen. was payed to the king in the checker, as is manifeſt in the ſchireff rolles. *Ia. 2. 1456.* & likewaies in the ſchiref-rolles, *Ia. 3. 1487.* in the quhilk rol, the barronnie of *Cadzou* is called *Hammilton*, and in divers vthers rolles.

CANVM, *Canum*. In ſindrie charters & infeftments of lands, ſpecially halding of the kirk, is comitonly vſed, for the duety and revenue quhilk is paied to the ſuperiour, or lord of the land; and ſpecially to biſchops, or kirk-men, quhidder it be quheat, beir, aites, or vther kinde of victuals: ſalt, or ſumms of mony, as is manifeſt, *vlt. feb. 1589.* The king contrare the L. of *Balmonth*. Zit neuertheles, the lands of *Kilconquhair*, liand within the ſchirefdome of Fyfe, are retoured to be halden be ſeruice of ward & releue, payand an certein ſum of ſiluer, *nomine cani*. to the B. of S. Andrews Quhilk to be weill done, I cannot affirme: for it is certaine, that all lands halden *nomine cani*, payis ane certain ſum of ſiluer, or ſome vther certain duty, particularly expreſſed in the infeftmẽt. Sa gif that maner of halding be like to the halding be ſeruice of ward and releue: of neceſſitie the ſamin mon be ane taxed ward, & during the time thereof, the tennent ſuld pay na mair but the particular ſums or duty conteinĕd in his infeftment. *Canum*, appeirs to be ane Iriſch word, for *Keañe* ſignifies the head, as king *Malcolm Keanmoir, grandis Capite, vel capitõ*, great head: and likewaies *kain* or *Chan*, is called tribute, payed be the ſeruand, or ſubject to the maiſter, as I haue red in ane auld authentik regiſter of the biſchoprik of *Dunkeld*, quhair it is called *Chan* or *Chanum*. And amangis the *Romaines* there was twa kinds of tribute: ane real, quhilk was impute be reaſon of the quantity of the lands & guds immou'able, quhilk is called *iugatio, quod pro modo iugerum imponebatur. l. 9. C. de agricol & cenſit. lib. 11.* Ane vther perſonal quhilk was jnioyned to the perſon: and is called *capitatio, quod pro capite*

hominis præſtatur. d. l. 9. cũ. l. ſeq. et ibi gl. l. ſacroſáctæ. 8. C. de ſacroſanct. eccleſ. l. vlt. C. de annon. et tribut. lib. 9. And in the Evangel, *licetne dare cenſum Cæſari. Theod. Beza interpretis, licetne dare capitationẽ Cæſari. Aulus Gellius*, & vther latin writers makis mẽtion of them quha was taxed be the head or pow. In latin *capite cenſiti.* Sa this word *Cane* ſignifies the head, or rather tribute or dutie, as *Cane* fowles, *Cane* cheis, *Cane* aites, quhilk is payed be the tennent to the maiſter as ane duety of the land, ſpecially to kirk-men & prelats, quha in the time of their greatnes & ſupremacie, vſed ane forme & ſtile, diuers from vthers: and the auld form of precepts, giuen in the time of K. *Robert* zit extant, anent the inbringing of the K. rents, conteins *cenſum, Cana, reditus, cuſtumas.* And canage of wol, or hyds, is taken for the cuſtome theirof, *le nautũ fol. 171, in li. M. Willielmi Skene, commiſſarij Sanctandrea fratris mei germani.* Specially, quhilk is giuen for the mending & vphalding of the hauen for ſchips. *leg. burg. c. vlt. in lib. Carbraith.*

CAMPIONES, ane word commonly vſed in ſingular battell: For in auld times, quhen controverſies, and debates culd not be vtherwiſe decided, bot be ſingular battell: the parties did either fecht in proper perſon, or conduced, & fied for wage vthers to fecht for them. Quha war called *campiones*, becauſe they faucht in *campo*, or in the feilds, *de iudic. c. 93.* Albeit ſumtime they did fecht in the K. palace. *lib. 4 c. ſtat. 38.* & ſumtime in the cõmon ſtreits. *quo. attach. c. apud Drumfreis, 59. ſtat. Alex c. apud 28.* from the quhilk conſuetude cumis the cõmon ſaying: *Do thou richt, do thou wrang, cheis thou a campion ſtrang*: for this is the law of Scotland. Becauſe in all actions, and quarrels decided be campions in ſingular combat: That partie did win the cauſe, quhais campion was victorious, & he quhais campion was vanquiſhed & ouercum in battel, did tine his caus. *vi. Duellum gladiatores*, or *duellatores*, ar forbidden. *l. vnic. C. de gladiatoribus*,

CATALLA, an french word, *Chattel*, as is cõmonly taken in the lawes of this realm, for all guds & geare moueable, *li. 2. c. cum quis. 52. c. vſurarij, 53. c. 55. vbi res mobiles dicuntur catalla:* & likewiſe in the laws of *Normandy* guds moueable, ſignifies al things, as poſſeſſions quhilkis may be remoued fra ane place to anvther, & cõmonly are called cattel, as horſe, claith, gold, ſiluer, & vther ſik things. *li. 5. c. 1. l. 8. c. 1.* Like as *hæreditas*, or heritage ſignifies al lands, & immoueable guds in the ſaid law of *Normand. li. 8. c. 1* and alſo in the lawes of this realme. *li. 2. c. 53. ſtat. gild. c. item quod quicunq; 19.* and *leg. burg. c. ſi contingat 104.* gif ane burges deceas without an teſtament, his aire, and his cattell, ſalbe in the keiping of the kinſmen of the mother ſide, called *cognati*. And his heritage in the keiping of his kinſmen of the fathers ſide, called *agnati*.

The paine of him quha is convict in battell or breaks the kings protection.

CATHORIVS, *Catherius*, quhat it ſignifies, I cannot weil declair, alwaies it is equivalent to the valor of 9. Ky, *St. Alex. c. apud. 28. quo. at. c. apud 59*: quhair it is ſtatute, that gif ony perſon beis cõvict in ſingular battel, or vtherwiſe of breking of the K. protection, or peace: he ſall giue to the K. *viginti duas vaccas, et tres cathorios, vel pro quolibet cathorio novẽ vaccas.* It is true, that *cantherius* in latin, ſignifies an gelded horſe: fra the quhilk cums the latin proverb, *cantherius in foſſa*, againſt thẽ quha being vnable, & not qualified, ſeiks & crauis offices, quhairin they cã do na mair ſeruice nor a hors or horſman can do, being incloſed within an fowſie: & ſiklike *cãtherius in*

Cantherius.

in porta, quhen ane horſe being led furth of the ſtabill, in the port, or in the beginning of his journey, ſnappers or fallis with his maiſter: The ſuperſtitious peopill eſteemed that to be ane evill preſage of the journy.

CARRVCATA *terræ*, Ane French word, for *charrou*, is ane pleuch, *aratrum*, and conteins allmeikle an portion, or meaſure of Land, as may be tilled, and laboured within zeire and daie be ane pleuch. *lib. 1. c. dos. 19.* Vtherwaies in the ſamin place it is called *hilda terræ*, *vel hida terræ*, quhilk is ane worde vſed in the auld *Briton* Lawes. *Hida terræ*

CARTA *extenſa*, or *extenta*, Ane chartour quhilk conteinis ane diſpoſition of landes, with certaine meithes, & marches, vtherwaies called an boundand chartour, *quon. attach. c. ſtat. dominus rex. 62. aſſ reg. Da. c. ſtatuit per conſilium, 36. Stat. Wilh. c. 7.*

CAVPES, Calpes, in *Galloway*, and *Carrict*, quhairof mention is maid in the Actes of Parliament. *Ia. 4. p. 2. c. 18. 19.* ſignifies ane gift, ſik as horſe, or vther thing, quhilk an man in his awin lifetime, & liege pouſtie giues to his Maiſter, or to onie vther man, that is greateſt in power and authoritie, and ſpeciallie to the head & chiefe of the clann, for his maintenance and protection, like as for the ſamin effect and cauſe ſindrie perſones payis Black maill to thieves, or mainteners of thieues, contrair the lawes of this Realme. Bot in the *Iles* and *Hie-land* of this Realme, the *calpes* are preſentlie payed be him quha obliſhis him theirfore, after his deceaſe. Swa the *Herezelde* is payed be proviſion of the Law: and the *Calpe* is given be ſpeciall paction, and obligatione, baith the ane and the vther after the deceaſe of the debtour. Bot the *Herezelde*, ſuld be firſt payed to the Landſ-lord, and ane notabill oppreſſion is vſed in taking vp of the *Caupe*. For gif the chiefe of the clanne obliſhis him to pay ane *Calpe*: after his deceaſe, an *Calpe* is payed for him. And alſo quhen onie of his clanne deceaſis, ane calpe likewaies is payed for ilke ane of them, be reaſoun of the promes maid be their maiſter and chiefe. *Perinde acſi obligatio facta per principem tribus, obligaret ſingulos ex tribu.*

CEPVM *animalium*, the taulch, creiſche or fatnes of beaſtes *leg. burg. c. ſi quis ſcienter. 71.*

CHAMPERT; ane bud, or gift, taken be onie greate man, or judge fra onie perſon, for delay of iuſt actiones, or furthering of wrangous actions: quhidder it be landes or onie gudes moveable. *Stat. 2. Ro. Br c. dominus Rex. 22. Champert* iu the lawes of *England* is quhen the judg be himſelfe directlie, or be onie vther indirectlie, manteinis the pley, to obteine the maintenance of the ane partie againſt the vther, *Iohn Raſtell, ver. Champert*, In the civill law, *pactum de quota litis*, is vnleſum and forbidden *l. 5. C. de poſtulando l. ſi contra 22. C. mandati.*

CHARDONES *vel Cardones*, Cardes quhair with wol is carded and wrocht. *leg. burg. c. de parua cuſtuma 137*, fra the *French* word, *Chardon* from *Carduus* ane thriſſill, to the quhilk the Cardes are like in ſcharpnes and in multitude, or ſimilitude of monie ſcharp pykes, and teith.

CHAVD-MELLE, in latine *Rixa*, ane hoat ſuddaine tuilzie, or debaite, quhilk is opponed as contrar to forthoucht fellonie. Ia. 1, p. 6. c. 95. *vid. Melletum, vid.* Forthoucht fellonie.

CHECKER, and the forme of Comptes maid theirin. *vid Scaccarium, vid. Ballivus.*

CLAN-MAKDVF *de iudic. 78.* The croce of *Clanmakduf* dividis *Stratherne* fra *Fife* abone the *Newburgh*, beſide *Lundoris*. The quhilk had priviledge and libertie of *Girth*, in ſik ſorte, that quhen onie man-ſlayer, being within the ninth degrie of Kin & bluid to *Mak-duff*, ſumtime Earl of *Fife*, come to that croce, & gaue 9. kie and an colpindach, he was free of the ſlaughter committed be him. In the ſtanes of this Croce, I ſaw ſindrie barbarous wordes and verſes written, quhilk here willinglie I pretermit, and zit ſum of them appearis to be conforme to this purpoſe; *propter makgidrim & hoc oblatū, Accipe ſmeleride ſuper lampade limpida labrū.*

King *David* the 2. gaue and diſponed the Earle-dome of Fife, with al priviledges *& cum lege qua vocatur Clan-makduff*, to *William Ramſay* and his aires, quhilk charter is zit extant in the Regiſter. *Hector Boetius lib. 12.* declairis three priviledges given to *Mak-duff*, his clanne and familie, 1. that the Earle of Fife ſuld ſet vp the King in his Chyre, the time of his Coronation: the 2. that in the time of battell, he ſuld fecht the want-gard. The 3. that *Mak-duff* and his clanne ſuld haue the priviledge and richt of regalitie. And I ſaw an auld evident bearand, that *Spens* of *Wormeſtoun* beand of *Makduffis* Kinne, inioyed the benefit and immunitie of this Lawe, for the ſlauchter of ane called *Kynnynmonth*.

Chyre.

CLAREMETHEN, Clarmathan, the Law of *Claremethen* concernis the warrandice of ſtollen cattell, or gudes: for quhen ſik gudes ar challenged, or repeated be the juſt awners theirof: It is ſtatute and ordainned that all perſones, quha ſuld warrand the ſamin, ſall cum to certaine places, ſpeciallie nominat and appoynted to that effect, and lauchfullie warrand the ſamin. *lib. 1, c. hæc ſunt loca. 22. Stat. Alex. c. de Catallo. 12.*

CLARIFICATIO *quo. attach. c. ſi quis appellat. 46.* The purging or clenging of ane aſſiſe. *aſſi. Reg. Da. c. 3. Clarificatio debiti*, the clearenes of ane debte, quhilk is notour and cleare in the ſelfe: Or clearelie, and ſufficientlie proven and verified. *leg. Foreſt. c. probato. 86.*

CLEP, and Call, ane forme of Clame, petition, or libell, or certaine ſolemne wordes vſed ſpeciallie in criminall cauſes, for ſum clames were conceaved ſimplie, without onie ſolemnitie of wordes, as in the brieue of diſtres, or poynding for debt. *quon. attach. c. de breuibus 31.* vther clames were libelled and conceaved in ane certaine ſolemne forme, as in pleyis of wrang and vnlaw, in the quhilk clepe. and call, was vſed as ane certaine ſolemnitie of wordes preſcrived be the Law, and obſerved in the practik, as quhen the perſewer did clep, & cal, the defender with wouth wrang and vnlaw, in harming and skaithing of him of ſik ane thing, or of ſik ane ſumme of ſilver mair or leſſe, to his great harme and skaith.

COLPINDACH an zoung beaſt, or Kow, of the age of an or twa

zeires

quhilk now is called an *Cowdach*, or quoyach, quhairof the price was. 30. d. *leg. Ma. Ma. c. 4.* It is an *Irish* word, & properly signifies ane fut follower.

COLLISTRIDIVM, *Collistrigium, quod collum stringat*. Quhilk maie be called the Ioggs, and is ordaned for punishment of baxters. *leg. Burg. c. si aliquis. 21.* quhair it is called ane pillorie, or stocks, or onie band quhair with the craig, or hals is bund, as ane halse-fang, in the laws of *England*, anno. 51. *Henr. 3.* in latin *Numellæ*. *Numellæ*

CONQVESTVS, quhairof frequent mention is maid in the lawes and practik of this Realme, is different from heretage. Because heritage signifies lands & immoveabil gudes, quhilk perteinis to onie person, as aire and vniuersal successour, to his father, or onie vther predecessour: & be the civill lawes *hæreditas nihil aliud est quàm successio in vniversum ius, quod defunctus habuit. l. hæreditas. 62. de regul, iur. l. nihil. 24. de verb. signif.* & be the municipall law of this realme, the eldest sonne succedis iure *vniversali* in *vniversam hæreditatem patris sui. lib. 2. c. cum quis. 29. Conquestus* signifies landes, quhilk onie person acquiris and possessis *privato iure, vel singulari titulo, veluti donatione, vel singulari aliquo contractu. lib. 3. c. cum verò. 28*, Quhilk is conforme to the civill law, *vbi quæstus dicitur lucrum, quod ex emptione, Venditione, locatione, conductione, vel generaliter ex opera cuius descendit. l. coiri. 7. cum seq. ff. pro Socio. Et de iure huius regni, conquestus cuiuslibet liberi hominis legitimi, qui moritur de ipso sasitus hæreditariè, sine hærede de corpore suo, gradatim ascendit: hæreditas verò gradatim descendit. Stat. Wilh. c. notandum. 24. leg. Burg. c. sciendũ 155. Stat. Rob. 3. c. 3. vid. post. natus.* And it is to be observed, that gif conquest landes, after the decease of the conquerour, dois anis ascend, to ony persõ, quha theirafter hapenis to decease, the famin landes sal descend, as heretage to his narrest aire, because conquest dois allanerlie anis ascẽd, & therafter perpetuallie descẽdis to the righteous aire, gif onie be: *quia cõquestus dicitur ratione primi cõquestoris, & cũ trãsmittitur ad eius hæredẽ, exuit naturã cõquestus, et induit naturã hæreditatis.* *Heretage.*

CORONER, Crouner inquirs be ane inquest anent murther and slaughter done, and committed quietlie. The quhilk inquisition suld be taken in the hie streites, or in open places, in *corona populi*, for the quhilk cause he is called *coronator*, or zit because the violent death of the subjectes perteins to the Kingis Crown, and power. Quhairanent the crouner takis inquisition, as said is. *D. Thomas smith lib. 2. c. 23.* of the common weill of *England*, Reade the English lawes *anno. 4. Edward. 1. c. 2.*

CREFFERA, or *hara porcorum*, ane cruife, or ane swines cruif. *leg burg. c. Nonlicet. 87*, quhilk in sum auld buikes is called ane *Stye*.

CRO, Croy, in the actes of Parliament. Ia. 1. p. 2. c. 93, is ane satisfaction or assithment for slauchter of ony man, The quhilk the judge suld paie to the narrest of his kin, incase he minister nocht the Law as he suld doe. Ia. 1. p. 6. c. 89.

CVLRACH, sũtimes is called ã furth cõandborgh, bot mair properly it may be called an backborgh, or catiõer, for quhen ony havand power, or jurisdictiõ replegis ony man fra an vther mãs court, to his awin court, he suld leif behind him in the court, fra the quhilk the replegatiõ is maid,

 ane pledge or

or cationer quha ſalbe bundin & obliſhed, that he quha vſis the replegiation, ſall doe juſtice within zeire and daie in his awin court, to the partie complainand, vpon the perſon quha is repleged. Quhilk cautioner left in the court be him, and behind him quha, vſis the replegiation, is called *Culrach. lib, 4, c. ſi quis in alterius 20. quo. attach, c. 3. mod, ten, cur. c. 12 de Iudic, c, 28.* And gif the partie complainand gettis na reaſon in that court, to the quhilk, the defender is borrowed & repleged, he ſal haue regres againe to the firſt court, fra the quhilk the replegiation was maid, and their ſall the mute, and pley be ended, and the Culrach ſalbe in ane vnlaw, gif the partie perſewed compeirs nocht, and he quha vſed the replegiation, and did nocht Iuſtice ſall tine his court for zeire and daie.

CVRIA Ane courte, quhairof ſum are ſuperiour and ſum inferiour, *leg Malc, Mak. c, 4, vide Amerciamentum.* The ſupreme court is the Parliament quhilk hes juriſdiction of all maters Eccleſiaſticall civill, & criminall. All courtes by and attour the ordinar perſones of the judge, the perſewer and the defender ſuld haue certaine vther perſones and members, quhilkis are called *claues curia*, the keyes of the court, that is ane lauchfull officiar or ſerjand, quha ſuld ſummond, attache and arreiſt the parties. Ane lauchfull Clerke quha ſuld informe the aſſiſe, and the dempſter, and hes the cure and keiping of the proces. Ane ſutour quha wardis and pronunces the waird, and interlocutour of the Court. Ane dempſter or doomeſter quha gives the doome or ſentence definitive, conforme to the information of the Clerke or the Iudge.

Claues curia.

CVRIA *chriſtianitatis lib, 2, c, debet autem, 37, lib. 1, c, placitum, 17,* Is called the eccleſiaſticall juridiction or court, vtherwaies *forum eccleſiaſticum lib, 1, c, 5, Curia Chriſtianitatis opponitur laicali ſeu ſeculari, lib, 2, c, cum aliquis 59, lib, 3, c, preterea, 23.* For vnto the ane perteinis the eccleſiaſticall, and to the vther the temporall or ſecular juriſdiction.

CVRIALITAS, curialitie, curteſie, from the French *Curtoiſe* civilitie, gentelneſſe, humanitie, for the law of curteſie, is an gentill and favorable ordinance or conſtitution, granted and obſerved in this Realme, and nocht vniverſallie keiped, or vſed in vther cuntries, And therefore it is called *Curialitas Scotiæ*, the curteſie of *Scotland.* And in the laws of *England lex Angliæ*, or the curteſie of *England*, within the quhilk twa realmes and nane vther this law is in vſe. That is quhen onie man maries lauchfullie ane wife, and receivis lande and heritage with her: And it happen that he beget with her ane bairne, quha being borne, is heard cryand betuixt foure walles of ane houſe: And therafter his wife deceaſis before him, he ſall bruik and poſſeſſe, all the landes quhilks perteined to her, in-during his life time, albeit the bairne liue or deceaſe. *Lib. 2. c cum itaque 58:* The bairne borne, being ſonne, or dauchter, maill, or femaill *de Iudic. c. Maritagium. 127:* Quhilk law hes place in landes and heretage, lyand without burgh, halden of the King or ony vther ſuperiour: And alſo in landes and tenementes lyand within burgh and halden in free burgage. *Leg. Burg. c. ſi aliquis. 44.* This Law is nocht introduced

ced in favoures of the wife or bairnes, bot is maid in favoures of the hus-band allanerlie. And therefore it is nocht neceſſar that he haue onie ſaiſing, infeftmente, or vther richt, to the landes quhilk perteined to his wife heretablie: Bot onelie the benefite and priuiledge of the curteſie, quhilk is valiable and ſufficient to him induring his life-time, for bruiking and poſſeſſing of the landes, and for remouing, out-putting and inputting of tennentes, in ſik maner as gif he were proprietare, lyfe-rentar, tackes-man or rentaller. And maire-over, the Lawe of the curteſie is extended in favour of the Second hus-band. And therefore gif ane man maries ane heretrix, and after his deceaſe, ſhee marie ane Second hus-band, and beare to him ane ſonne, or ane dauchter, and thereafter ſhee deceaſes, hir ſecond hus-band aucht and ſulde bruike and jois the priviledge of the curteſie, in ſik maner as gif the firſt hus-band micht haue done, incaſe his wife had deceaſſed before him. *lib. 2. dic. cap. 58. de Iudic. Cap. 127.*

As concerning the eſtaite and qualitie of the woman that is maried, it is neceſſar that ſhe be heretablie infeft and ſaiſed in the landes as aire to hir father or vther hir predeceſſoures. Bot it is nocht neceſſarlie required, that ſhe be ane virgine and maiden. Becauſe the curteſie perteines to the ſecond hus-band, quha maries ane widdow as ſaide is. Alwaies quhidder the wife, be widdow, the time of hir ſecond mariage: or virgine and maiden, the time of hir firſt mariage, neceſſarlie ſhee ſuld be ane heretrix, aire, or vniverſall ſucceſſour to hir Father, Mother, or to ſum vther of hir predeceſſours. For gif the wife hes onlie richt and titill to the landis and heretage, as ſingular ſucceſſour, be vertue of onie contract, *veluti titulo emptionis*: Hir husband after hir deceaſe can never clame richt to the landes, induring his life-time, be the curteſie of Scotland. Twenty aucht Ianuar, an thouſand fiue hundred, nintie fiue. *Robert Lundie* of *Balgony*: contrair *Robert Balfoure* of *Dovane*. The curteſie hes nocht place quhen na bairne is borne in lauchfull mariage, for it is neceſſar that ane bairne be borne maill or femaill, quick and liveand: And for probation theirof, he mon be heard cryand, for the curteſie hes place *in puero clamante*, (or as it is written in ſum buikes) *brayand*, ſqueiland, or loudlie cryand. For in Frenche *brayer*, in the latin *vagire*, is to crie or greite with ane loud voice. Quhilk word in our language, is alſwa attributed to Hoſe, Hartes, and vther beaſtes. And gif controverſie ariſe anent the life or crying of the bairne, it is leiſum to the Father to pruife the ſamin be twa lauchfull men or wemen, quha hearde the bairne *clamare, plorare, vagire ſeu brayare. leg. burg. d. cap. 44.* The hus-band or Father ſuld bruike the curteſie after the death of his wife, albeit the bairne being borne quick happen to deceaſe immediatelie, or ſhortlie after his natiuitie. Or albeit the bairne and the Mother baith departe this life; for ſuppoſe the bairne happen to deceaſe before his Mother and ſhee deceaſe theirafter, or albeit baith the bairne and the Mother deceaſe at ane time, or zit gif the bairne lives, and the Mother before

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the huſ-band depart forth of this life, the huſ-band ſurvivand after her death ſall bruike the priviledge of the curteſie of all Landes quhairin his wife was heretable infeft: ninth of Iulij, ane thouſand, fiue hundreth nintie ſeaven. *Martha* and *Eupheme Mackalzeames*, contrar Maiſter *Iames Ward-law* advocate. Swa the ſubſtantiall heades of the curteſie are thir following, quhairof gif onie ane failzie the curteſie ceaſis. Firſt is required ane lauchfull mariage betuixt man and wife: Secondlie, The wife ſuld be ane heretrix haueand *ius vniverſale*, quhairbe ſhe ſucceids to her Father, Mother, or ſome vther her forbeare: Thridlie, Shé ſuld be heretablie infeft and ſaiſed in the Landes. For gif ſhe deceaſe, nocht beand entered and ſaiſed, hir husband ſuld haue na courteſie. Fourthlie, She ſuld deceaſe before her hus-band; for ſa langas ſhee and the husband livis, he hes *ius mariti*. And after her deceaſe, he hes *ius curialitatis*. Fiftlie, Bairnes ſuld be lauchfullie gotten & borne, at the leaſt ane bairne, maill or ſemaill, quick and livand. Laſt of all the curteſie is als effectuall to the husband, tuiching wairde-landes, perteining to his wife, as the Kingis confirmation. For landes halden of the King in chiefe, and confirmed be him, fallis nocht in wairde, indureing the life-time of the perſon to quhome the confirmation is granted. He being theirby immediat tennent to the King. And like-wiſe, gif onie man maries ane heretrix of waird landes, and after her deceaſe her aire is *Minor*, and of leſſe aige: Nevertheleſſe the landes fallis nocht in the ſuperiours handes, be reaſoun of warde. Bot the husband ſulde bruike and poſſes the ſamin indureing his lifetime, be reaſon of the curteſie of this Realme. Becauſe the tight of the waird perteining to the ſuperiour, ceaſis quhair the curteſie belangand to the hus-band hes place. *Penult. Februar.* ane thouſand, fiue hundreth, fiftie three; *George Gorthie* contrar the Lorde *Methven*. And zit the huſbande being onelie life-renttare may nocht ſell or annailie heretablie the ſaides Landes, or onie pairte theirof, in hurte and prejudice of the richteous aire. *leg. burg. c. 44.*

Clamare. DISCLAMATION is vſed in the law, and practick of this realme *Clamare idem eſt quod dicere, affirmare*: As *clamare aliquod tenementum, aut aliquam terram eſſe ſuam*, to claime and affirme onie heritage or lands to be his awin. *Clamare aliquem dominum* to clame, avow, and affirme onie man to be his maiſter or ſuperior, to quhom he aucht ſeruice, & of quhó he haldis his lands in chiefe. *Diſclamare* is to diſclaime, diſavow or denie as to denie ane vther to be his ſuperiour, as quhen the ſuperiour affirmis the lands to be halden of him, and the vaſſall denies the ſamin. In the quhilk caſe gif the contrar be fund of veritie, the vaſſall tines and amittis all the Landes quhilk he haldes of that ſuperiour, & the propertie theirof returnis to the ſuperiour, *de maritag. 6, 18. Stat. Ro. 3. c. primo. 20.* Quhair the auld forme and maner of diſclamation is declared. Maitouer, diſclamation is quhen the perſewer claimes lands perteinand to him, and haldin of an ſuperiot: and the defendour affirmis the ſamin to be haldin of

Diſclamare.

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ane vther over-lord. *lib.1.c.solet.26.lib.3.c.tali,18.* To the decision of the quhilk controversie, baith the saids alleadged over-lordes suld be called. And he quha failzies to prooue himselfe superiour, sall neuer be heard to claime the samin afterward, and the vassall being convict, tynis the land and propertie theirof, quhilk is adjudged to him, quha was wrangouslie denied be the superiour, & is found to haue richt theirto, *lib.1.c. si verò 28.* Last the vassall tynis & forefaultis his landes, gif he wrangouslie denies his few, or the condition theirof, that is the service aucht their fore, conforme to the French proverbe *qui fief deniefie, spert.* The reason is because the vassal deny and his halding, his maister or landes, contemnis and dishonours his maister. Bot it is necessar that the vassall or tennent denie fraudfully, that is wittinglie, *quia vassallus feudum quod sciens abnegauit, amittit: ignoranti verò subvenitur. Quòd si dubitet, dubitanter respondere potest. Cuiacius. lib.4.de feud tit.S.& Tit.21.& . Tit.39. de pœna negantis feudum.* 3

DISRATIONARE, from the French word *Disrener.* In Latin *Duellare, Duello contendere*, to ficht in singular battell, and commonlie is vnderstand of the appealer, or persewer, *quia cum vadiatur duellum prouocans dat vadium disrationandi, & defendens vadium defendendi.* Sum-time *disrationare* is mair generallie taken, for to tine onie thing in judgement be forme of proces, concord or aggrieance. lib.3.c. *cum itaque.14.lib.2.c.si eri autem.67. quon. attach.c.4.* Item it signifies to prooue onie thing conforme to the consideratione of the Courte be battell, write, or be ane assise of the cuntrie. *lib.1.Cap.si verò.18.Cap.si verò Dominus.29.Iter camer. Cap.apparens.24.* Or be the aith of the partie, and certaine conjuratoures, quhilkis are called *Sacramentales*, Quha sum-time maa, and sum-time, fewer in nümber makis faith and swearis in onie cause with ane partie, haueand entresse in persute or defence. *Cuia, lib. 1. de feud.* And in the Lawes of this Realme, *dicitur aliquis Iurare cum tertia, septima, Duodecima manu.* Quhen three, seaven or twelfe persones swearis with him. Quhilk in the Cannon Lawe is called *Purgatio Canonica.* *Sacramentales.*

DISSASINA, *Sasina* is ane French worde, and signifies possession, to the quhilk *Dissasina* is contrare, and signifies dispossession, quhair ane person beand in possession of onie Landes, as mailler to his maister, or haueand onie vther title theirto in write, is wrangouslie ejected and put fra the samin, without onie warning or ordour of Law. Likewise *Dissasina* is called spuilzie, quhen onie person is spuilzied violentlie & wrangouslie of moveable gudes and geare, pertaining to him, as his awin proper gudes: and being in his possessioun certaine daies or monethes. For ejection concernis Landes and gudes inmoveable, and spuilzie is of cattell, and gudes moveable, and baith the ane and the vther is comprehended vnder *Dissasina. ass.reg. Da Cap. Statutum fuit.31.* Quhilk is conforme to the English Lawes. *Henric.3, Stat.* *Eiection Spuilzie*

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de Mertoun.c.3. and to the lawes of France. *Molinæus in ſtil.cur.Parl.part.1. c.18.* And be the auld law of this realm, *Diſſaſitor*, or committer of ſpuil-zie or ejection, being convict theirof ſuld pay ane vnlaw of ten pundis to the King. *Stat. Alex.c.Stat.7.* And may be accuſed criminallie before the Iuſtice and his deputes. Ia.5.p.4.c.33.

DISPARAGIVM, like as *parage* is called equalitie, from the latin word *paritas*. Sa *diſparagium* is called inequalitie in bluid, honour, dignitie, or vtherwaies, from the word *diſparitas*, leg. *Foreſt.c.de haredi-bus.64.cum ſeq.*

DISSOLVTION, an latin word, quhilk ſignifies lowſing of that thing quhilk was bound of before. And like as lowſing is contrar to bin-ding: Swa diſſolution is contrar to annexation, ſpeciallie in the Kingis propertie, annexed and vnited to the Crown. For the ſamin being diſ-ſolved is maid lowſe, and free of that nature and qualitie, that it may bee annalied and diſponed to ſik as pleaſis his Hienes, with certaine conditi-ons and proviſions. Diſſolution of the propertie is maid to the effect the ſamin maie be ſauld and annalied be the King, and therefore can nocht be lauchfully maid in his minoritie. Ia.6.p.14.c.203. For like as the King being *Minor* may nocht ſel his propertie: evin ſa at that time, it is nocht leſum to him to doe onie thing that maie be ane preparative to the alie-nation theirof. And likewiſe gif onie man haveand heritable infeftment or vther richt to onie part of the Kings annexed propertie, for the crime of treaſon, is forefalted: and theirafter be the thre Eſtaites in Parliament is reſtored in the minoritie and leſſe aige of ane King. Albeit this reſti-tution may rehable his perſon: Zit is na ſufficient richt to repone or reſtore him againe to his richt of the ſaid annexed propertie. For like as an diſſolution maid in the Kings minoritie is null: Evin ſwa, ane reſtitu-tion maid in his les aige, concerning his annexed propertie is of nane a-vaill: for the diſſolution, and reſtitution are baith of ane nature, and pro-ducis ane effect, hurtfull and prejudiciall to the King, *in Regiſtro.* 18. Iulij 1597. The Kingis advocate contrar *Alexander, Lorde Hume*, and tennentes of *Dumbar*. And ſa it is manifeſt that ane diſſolution of the an-nexed propertie ſuld be maid be ane King in his majoritie, in an Parlia-ment with conſent of the three Eſtaits, Ia.6.p.15.c.233. Bot an annexati-on may be maid in Parliament in the Kings minoritie, *quia rex eodem mo-do quo quilibet minor conditionem ſuam poteſt meliorem facere.* It is leſum to the King after the diſſolution, to ſet his proper landis annexed, or vnan-nexed in fewferme to onie of his lieges, and ſpeciallie to the kindlie ten-nentes and poſſeſſours theirof, as he pleaſis. Diſſolution induris only for the ſite time of the King, maker and author theirof, and quhen he de-ceaſis, the ſame ceaſis and endis. And theirfore the ſamin beand tem-porall, and perſonall, his aires and ſucceſſours may not ſet onie annex-ed landes in fewferme, be vertew of onie diſſolution, maid be his Father or predeceſſour. Albeit diſſolution be temporal, as ſaid is, zit the Landes ſet and diſponed her etablie after the diſſolution, remainis perpetuallie with

The King in his mi-noritie, maie. nocht diſ-ſolue his propertie

Quhen and be quhome diſſolution ſuld be maid.

To quhom may the King ſet his proper tie

Diſſolution is temporal

with them and their aires, to quhom they ar diſponed, after the forme of the conditiones, conteined in their infeftmentes. And ſwa the alienation and diſpoſition lauchfullie maid, is perpetuall, *& tranſitoria ad hæredes*. Albeit the diſſolution be Temporal and perſonall, as ſaid is. The diſſolution expyrand and ceaſand, be the deceaſe of the author thereof, as ſaid is: All the landes annexed of before, returnis againe to the forme & nature of the annexation; Swa that the ſame may not be ſet in few-ferm, nor annalied be the King, ſucceedand to him, quha maid the diſſolution; vntill ane new lauchfull diſſolution be maid thereof be him ſelfe. In reſpect that all annexationes of their awin nature, ar perpetuall; and albeit, they may be interrepted and ſtayed, for ane certaine ſpace, be ane diſſolution; zit after the ende thereof, the annexation dois quicken, reviue, and walken, as it were, out of ſleep, and returnis to the awin perpetuall nature, and ſwa remainis vntill ane new diſſolution be maid.

Diſpoſition of lādes diſſolued is perpetuall.

The diſſolution being expired, the annexation beginnis to quicken, and reviue.

The King, after ane diſſolution, may ſet his landes in few-ferme allanerlie, and not in blench, or *nomine albæ firmæ*, nor be ſervice of warde & reliefe, or vtherwaies, bot in few-ferme, as ſaid is. Iam. 6. par. 15. ca. 234.

The King may set his propertie in few-ferme allanerlie.

The King may not ſet his landes in few-ferme, except the ſamin bee done with expreſſe augmentation of his rentall: That is, his greſſumes, cuſtomes, burrow-mailles, fermes, martes, murton, pultrie, avarage, cariage, or ony vther dewties & ſeruice. Quhilk is not only manifeſt in the alienation of the annexed propertie: Bot likewiſe ſuld be obſerved and keiped in the diſpoſition of the vn-annexed propertie. For it is certaine, that the King is of this realme, the time of their Coronation, makis faith ſolemnelie, that they ſal not annalie, transfer, nor diſpone the richt and rents of the crown: As it is ſtatute be *Dauid* 2. 6. No. 1357. & ſa as the K. may not ſel the richt of the crowne; na mair may he annalie the rentes thereof, quhairof the vn-annexed propertie is ane parte. Mair-over, albe it ane diſſolution is not neceſſar in the alienation of the vnannexed propertie (becauſe that quhilk is not bound, requiris na lowſing) zit in al diſſolutions maid be kings of this realm, expres mention is maid baith of the annexed & vnannexed propertie, to be ſet in fewferm, for augmentatiō of the K. rētal, quhairby it is certaine, that the an, alſweil as the vther, being ſet in fewferm, cānot be diſponed in diminution of the rental. And cōcerning that qualitie & cōdition, expreemed in the form of all diſſolutiones; the vn-annexed, & annexed propertie, ar of like nature: *Et in hoc caſu pari iure cenſentur:* Sa that neither the ane, nor the vther, may be diſponed, with diminution of the rental, vtherwiſe the mention of the vnannexed propertie, in the acts maid anent diſſolution, were ſuperfluous. Thir ar the ſubſtantiall conditiones, expreemed in the diſſolutiones of the propertie, maid be the Kings of this realme, quhairof, git ony ane be not obſerved, the alienation & diſpoſition maid after the diſſolution, is null, & of nane availe: I. 6. p. 15. c. 236. By & attour, the forme of diſſolution abone expreemed; it is leaſum to the King, with adviſe, deliverance & decreet of the haill parliament, and for great, ſeriand and reaſonable

The King's rental of the propertie, baith vnannexed and annexed, ſuld be augmented.

The annexed propertie, may be annalied be the thre Eſtaites.

causes, concerning the weil fare of the realme: First advised and digestlie cosiddered be the three estaites: To sell, annalie, & dispone the kings annexed propertie. Ia, 2. par. 11. cap. 41. Ia, 5. p. 6. c. 84.

Maritagium

DOS hes twa significationes, First it signifies that quhilk is given to the husband, with the wife, be reason & in contemplation of mariage. In the civill law is called *Dos*, in our municipall law, *Maritagium*, Tocher gud. *Lib. 2. c. Dos autem. 19.* Secondly, *Dos* is taken for that gift & disposition of lands & tenements, quhilk ane man givis to his wife, quhen he maries her at the Kirk dure, or in the face of the halie kirk: Quhilk aucht & suld be, ane reasonable thrid part of all and haill, the tenement of land, quhilk the man or husband hes the time of the desponsation or mariage. *lib. 2. c. Dos autem. 19. c. 20. lib. 4. cap. quatuor. 49. Stat. Alex. c. 8. de Iudic. 163.*

Antidos

And is given in recompensation of the tocher, payed be her, or in her name, to her husband: And therefore is called *antidos*: *Cornel. Tacit.* callis *dos* that quhilk the husband givis to the wife, & not that quhilk the wife gives to the husband. *Livius Lib. 3.* callis it *munus nuptiale*. In France it is called *Dotalitiũ*, or *doarium*. It is given to the woman, to the effect, that after the decease of her husband, she may susteine & nurish hir selfe, induring all the daies of her life-time: Therefore it is called *Vitalitia*. *Morganaticum* from the Dutch word *Morgengab*, morning gift, is ane kinde of dowry, in the second signification; & signifies the gift of guds moveable or immoveable, quhilk the husbãd givis to his wife, the day or morning after the mariage, and commonly is vsed in the Dutch lawes, *in speculo Saxonico*; & *Landrecht*, in Greek ὑποβολον in latine *matutinale donum*. *Cuiacius li. 4. defend.*

Dotalitium. Doarium. Vitalitia Morganaticum

DVELLVM, *duorum bellum vel plurium*, singular battell, or combat: *vide Campiones*, Noble persones, or landed men, may fight in proper person, or be vthers in their name, quha ar called *Campiones*, in Latine, *duellatores*, Speciallie, sik as ar their awin bondmen, or tennentes, quha in bodie & guds ar vnder their maisters protection & maintenance; And therefore suld hazard and employ the samin in the defense of their maisters honour, and actiones. Bot husband men, ignoble, and vnlanded men, suld fight personallie, and nocht be *Campiones*. *Ass. reg. Cap. Statutum fuit per regem. 32.*

Bot all men that ar decreeped, lamed, mutilat, or passed the age of threescore zeires, ar excused from singular battell. *Lib. 4. c. 4. leg. Burg. c. Sobargensis. 24.*

And siklike, religious persones, clerks, & weemen may not be compelled to fight. *Lib. 4. c. 3. stat. Alex. c. 5. Ass. reg. Dav. cap. statuit dominus 38.* It is in free will and election of the defender, to fight, or passe to the knawledge of ane Assise. *Lib. 4. Cap. 2. Quia defendens debet, primò eligere deinde vadiare, & postea iurare. Lib. 4. ca. lex statuit 46.*

The appealer or prover, suld sweare that his quarrell is iust, & the defender sweare the contrair, avowand the equitie of his cause. *Iter. camer. c. Comparentibus 29.* It is not leesum to ony person to provok ane vther to

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battel, or being provoked to feght without licence of the King, vther waies, baith the appealer, & the defender, tinis & forefaltis al their guds moveable, & immoveable. *de Iudic. c, 87.* Becauſe na Barone hes power of ſingular battell, or of probation be water, or Irone; except the Kingis Schireff, or his depures, be preſent to ſee juſtice done. *ſtat. Alex. c. præterea 22.* Mairover, gif ony man havand the Kings licence, happenis to be convict be battell, or of breaking of the Kings peace, he ſall pay to the King xxij. Kye. *& tres cathorios, vel pro quolibet cathorio, novem vaccas. Stat. Al ex. c. apud. 28.* Quhilk paine & vnlaw, appearis to be ordained, to ſtay ſik vngodlie ſtrife & debate; for the law of ſingular combat is vngodlie, & ſuld not be vſed amang Chriſtianes, albeit the ſame was permitted & vſed be the *Longobardes*, in civil and criminal cauſes. *Alciat. de ſing. certam. Cuiac in Lib. feudorum.* Quhilk is conforme to the Canon law. *cap. i. 2. de purgat. vulgar.*

DYOVR, Dyvour, vtherwaies Bair-man; quha being involued & drowned in debtes, and not able to pay or ſatiſfie the ſame: For eſchewing of priſon and vther paines, makis ceſſion and aſſignation of all his gudes and geare, in favoures of his Creditoures: And dois his devour and dewtie to them, proclaimand himſelfe Bair-man, and indigent, and becummand debt-bound to them, of all that he hes. *Leg. Burg. ca.* Bairman. 144. In Latine, *cedere bonis*, quhilk is moſt commonlie vſed amangſt merchandes, to make *Bank-rout*, *Bankrupt*, or *Bankrompue*; Becauſe the doer thereof, as it were breakis his bank, ſtall, or feate, quhair he vſed his traffique of before. *de Iudic. c. Bairman 46.* Be the civill law, ſik ceſſion of gudes and geare may be maid judiciallie, or furth of judgement, be him quha is preſent, or abſent, be writ or epiſtle, or be ane mid perſon, called *Nuntius. l. vlt. de ceſſ. bonor.* Bot to the effect that debtoures ſuld be feared to deceiue their creditoures, and ſuld the mair willinglie paye their debtes in ſindrie places, diverſe ſhameful formes of dyvourie, ar vſed & obſerved: for ſum-times the debtour naked, ſittis vpon ane cauld ſtane, in preſence of the people. *Alciatus lib. 3. Parerg. c. 47.* Sumtimes his hinder partes, or hippes ar daſhed to ane ſtane. *Guidó Papæ. deciſ. 343.* Or in publick place, bair headed, his belt is cutted, quhairby he is proclaimed indigent of geare and credite: And therefore may paſſe and repaſſe quhair he pleaſis, without ony trouble of his Creditoures. *Iuxta illud Horatij, Epiſtola ſecunda 28. Ibit eò quò vis, qui zonam perdidit.* Conforme to the quhilk, in this realme, he is ſaid ro haue his belt cutted *Zonam perdere*, quha hes na gold, ſilver, guds nor gear. For in auld times, like as it is zit vſed in diverſe places, ilk man caried his ſilver & his gold in his belt, either in ane purſe hanging at the end thereof, or ſewed and incloſed within the ſamin. *Sueton. in Vitellio. cap. 16. Quia zona aureorum plena ſe circumdedit. Et Gracchus apud Gellium. Lib. 15. ca, 12. Zonas (inquit) quas plenas argenti extuli, eas ex provincia inanes retuli.* And in the tent chap. of *Mat.* and ninth verſe: CHRIST commandis his Apoſtles nocht to poſſeſſe Golde, Silver, or Money, in their Girdles. Mair-

Cedere bonis.

over, the forme of the aith quhilk be the Lawes of this Realme, the Dyvour ſuld make, conteinis that he ſall ſweare, that he hes nocht in free geare, aboue fiue ſhillinges, foure pennies: Fra the quhilk cummis ane commoun ſpeach dailie vſed amangſt puir and indigent perſons, quha hes nocht in gudes nor geare, the valure of fiue ſhillinges and ane Plack. In the Law of *Normandie*, *Lib.2.c.10. Lib.12.c.21.* Dyvoures ar called *Banqueroutieris*. And if they do the ſamin fraudfullie, they may be punished to the death:

E.

ENACH. *Lib.4.c ſtatuit dominus 64.* Ane mendis or ſatisfaction for ane fault, crime, or treſpaſſe. As gif the maiſter lyis with the wife of his bondman, or ſlaue: The ſeruand therefore ſalbe put to libertie, and ſall receiue na vther *Enach*, mendis, or ſatisfaction, for the violation or defowling of his wife. *Lib.2.c.pluribus 14.* Like as vtherwaies, *ſi vaſſallus, Cucurbitaverit dominum ſuum.* That is, gif the vaſſall makis his maiſter ane Cuckold: That is, gif he hes carnall copulation with his maiſters wife, he tinis and forefaltis his landes, *lib.1.de Feud.Tit.quib.mod. Feudum amittatur*, § 2. *Corbita*, in the Lawes of the *Longobardes*, is Adulterie: And *Cucurbita* ſignifies ane Cuckold, quhais wife is ane huire: quha vtherwaies is called, *arga. Glim. D.4.2.* From the Greeke, ἀργὸς *deſidioſus otioſus*, quha ſittis idle, and payis nocht his debt, bot ſufferis ane vther to woork his labour. *Alciatus in lib.de ſingulari certam.c.32. & in lib.problematum, Horatium ſequutus Cucullam vocat.*

Corbita
Cucurbita
Arga
ἀργὸς

ENCHESONE, the cauſe, occaſion, or reaſon, quhairfore ony thing is done: As quhen we ſay, that ane is condemned for Encheſone of thieft: That is be occaſion or be reaſon of thieft, committed be him. *Mod.ten.cur.c,21.* Or that the vaſſall is in the keiping of his Ouer-lorde, be Encheſon of warde. *qnoniam attach.Cap.51.* And ane action or pley, may be advocate fra the Schireffe Courtes, to the Kingis Courte, for mony cauſes. *Lib.2.c. Dos autem 19,* Quhilk in ſindrie Engliſh buikes, is ſaid for mony Encheſones. And *Ed.1.King of England.Weſtm,1.c.6.* Statutis and ordainis, that na-man ſalbe ane merchand, without ane reſonable Encheſone.

ENEYA, *Pars hæreditatis*, ane French worde for the firſt, chiefe, and principall parte of the heritage, *Leg.Foreſt.c.ſi. Hæreditas.96.* For in the *French* toung, and ſpeciallie in the Law of *Normandie*, the eldeſt and firſt begotten ſonne, is called *l'aiſne*, And in the Laws of *England Hen.3 in ſtat.Marlebrig.Cap.9.* It is called *Enitia pars hæreditatis.* And likewiſe in ane vther place of the lawes of the ſamin King, *Ius eſnicia*, quhilk in this Realme is the law of birth richt: In Latine, *ius primo genituræ, de quo Tiraquellus copioſè ſcripſit.* Be the auld civill Law of this realme, there is na richt of ſucceſſion in the richt line aſcendent. And therefore the father ſuc-

De iure ſucceſſionis

ſucceedis not as aire to his ſonne: Except ſpeciall proviſion be maid in the contrar. *Quia proviſio hominis tollit proviſionem legis. Et pacta conventa, legem contrahentibus præſcribunt.* Swa all ſucceſſion, is either in the richt line deſcendent, or in the line collaterall. *De iure ſucceſſionis.*

De linea recta deſcendentium.

THey quha ar of the richt line deſcendent, ſuld be preferred to all vthers: As the ſonne, the dauchter, the nepuoy, the neipce, & ſa deſcēdand *in infinitum*: obſerueand & keipand alwaies the prerogatiue of the degree: For the *Prior* degree, excludis the *poſterior* from al cōmoditie & title of ſucceſſiō: As the ſon in the firſt degree, excludis the nepuoy in the ſecōd; & the nepuoy excludis the pronepuoy in the thrid degree.

Gif ony man havand landes and heretage deceaſis, leavand ane ſonne allanerlie behinde him, without all diſtinction, the ſonne ſucceedis to all and haill the heretage; quhilk is in Latine, *ſuccedere in aſſem, vel ex aſſe. lib. 24. cum quis. 29.* *De filio.*

Gif ony man deceaſis, and leauis behinde him maa ſonnes nor ane, either he is *ſoccommannus*, and haldis not his lands be ſervice of warde: and then his heretage is divided amangſt al his ſonnes: or he is *Miles*, and haldis his landes *per ſervitium militare*, be ſervice of warde and reliefe. In the quhilk caſe, the eldeſt ſonne ſucceedis in the haill lands; quhilk heretablie perteined to his father. *Lib. 2. c. Si quis plures 30.* Bot this diſtinction is not obſerved be the practicque of this realme. Be the quhilk the eldeſt ſonne ſucceedis to his father, *ex aſſe*, that is, to all and haill his fathers heretage and landes; Albeit, ſindrie vther Nationes hes diverſe lawes hereanent: Like as be the law of God, in the auld Teſtament, amangſt the the Iewes, the firſt borne ſonne, after the deceaſe of his father, receivis double portion. *Deu. 21. 17.* That is (as ſome interpretis) als meikle as twa of his brether. *Ioſephus de Antiq. Iud. li. 4. c. 8.* writtis that the eldeſt ſonne, be reaſon of his birth richt, ſuld haue *duplicem facultatum paternarum partem*, the double parte of his fathers gudes. *De filiis.*

Gif ane man had diverſe wiues, quhairof ane is ane heretrix, havand landis perteinand to her heretablie; & hes procreat vpon ilk ane of them bairnes, maill, or femail; the ſonne gotten vpon her, ſucceedis to her heritage. *lib. 2. c. Si autem. 31.* For as generallie the ſonne ſucceedis to the father; Swa in this caſe, the ſonne ſuld ſucceede to his mother. *Leg. Foreſt. c. Si quis habuerit 26. de Iudic. c. 24.* Conforme to the commoun rule of the law. *Paterna paternis, materna maternis.* *De filiis diverſarum uxorum*

Quhen ony man deceaſis, leavand ane ſon, & dauchters ane or maa; The ſon allanerlie ſucceedis to al his fathers heretage. *Li. 2. c. Maritus. 32.* As gif ane man hes procreat with his firſt wife, dauchter; ane, or maa, and after her deceaſe, begettis ane ſonne, vpon ane vther wife, the ſonne onelie ſucceedis to him. *Leg. Foreſt. c. Si quis habuerit 26.* Becauſe the Son borne of the firſt, ſecond, or laſt wife, ſucceedis as vniverſall aire to his father, & excludis al his ſiſters. *De iudic. c. Item nota. 115.* As it is written in ſome buikes, *fœmina non ſuccedit cum maſculo.* *De filio & filia vel filiabus*

Failzieing ſonnes and bairnes, lauchfullie gotten of their bodies, the
De filia. dauchter ſucceedis. For gif the defunct hes ane dauchter allanerlie, ſhee ſuld ſucceede to all her Fathers heritage, in the forme and maner, as the ſonne ſucceedis to his father. *De indic. Cap. Item nota. 115. Lib. 2. cap. Haredum. 28.*

De filiabus ITEM, Gif ane man deceaſis, leavand behind him maa dauchters nor ane, gotten vpon ane mother, his heritage ſuld hee divided equallie amangſt them, in als mony partes or portiones, as there is dauchters to ſucceede: Quhilk forme of ſucceſſion, is called, *ſucceſſio in capita, cum ſcilicet hæreditas adeunda, dividitur in tot partes quot ſunt capita, vel perſonæ ſuc-*
Succeſſio in capita. *cedentes.* Bot the eldeſt dauchter, ſuld haue the principall meſſuage, with out diviſion, bee reaſon of her dignitie, and birth richt, and ſatisfaction therefore ſuld be maid to the remanent dauchters. *Lib. 2. cap. Si autem 31. De Indic. c. Item. Nota. 115.* Togidder with the ſuperioritie of the portiones, perteining to all her zounger ſiſters, to quhome their husbandes ſuld make homage, acknawledgeing her to be their ſuperiour, and their aires ſuld giue the relieue of their landes, quhen it ſall happen. *Lib. 2. c. Maritus. 32.*

De filiabus diuerſarum nuptiarum Gif ane man haue ſindrie wiues, and of ilk wife, ane or maa dauchters: All his dauchters ſucceedis to him in his heritage equallie, *Per capita*, as gif they were all gotten vpon ane Mother. *Libr. 2. c. porrò contingit. 33.*

ITEM, Gif man dochters nor ane, ar procreat vpon ſindrie wiues, of the quhilk wiues, ane is ane heretrix: Swa that the heretage cummis be her, and not be her husband: The dauchter, or dauchters gotten vpon her, ſucceedis to her heritage, and excludis all the reſt of the dauchters, theirfra. *Leg. Foreſt. c. Si quis habuerit. 26. De Iud. ca. 24.*

De Liberis burgenſium ex diverſis nuptiis. Be the Lawes of the Burrowes, gif ane Burgeſſe haue maa wiues nor ane, and bairnes procreat of ilk ane of them: All the lands perteining to him, be reaſon of heretage, or conqueſt, in the time of his firſt wife, ſuld perteine to the bairne gotten with her, in the firſt mariage: And all the landes conqueſt be him, the time of his ſecond wife, ſall perteine to the bairne gotten with her, in the ſecond mariage. *Leg. burg. c. Si Burgenſis. 26.*

De ſecundo gradu nepotum vel neptium. Failzieing ſonnes and dauchters, quhilkis ar neareſt and lauchfull aires, the richt of ſucceſſion perteinis to the *Nepuoy* or *Neipce*, gotten vpon the Sonne, or the dauchter. *Quia deficientibus proximioribus hæredibus, nempe filio vel filia vocantur, hæredes remotiores, ut Nepos vel Neptis ex filio, vel filia, recta linea deſcendens. l. 2. c. Hæredum. 28.*

De nepote vno vel pluribus ex filio Gif ony man deceaſis, leavand behinde him ane *Nepuoy* or *Nepuoyes*, ane or maa, procreat be his ſonne alreadie deceaſed. (*Ex filia præmortua*) they ſuld ſuccede to him in the ſamin maner, as is abone ſaid, of the ſucceſſion of ſonnes: That is, gif there be ane *Nepuoy* allanerlie, he is onelie vniverſall ſucceſſour: And gif there be maa *Nepuoyes*, the eldeſt allanerlie ſucceedis to all. *l. 2. c. Povro. 35.*

De nepote & filio Gif ony man deceaſis, leavand behinde him ane Nepuoy, begotten be his eldeſt ſonne, alreaddie deceaſed, And ane ſecond ſonne, quha is

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father brother to the ſaid Nepuoy: The ſecond ſonne is excluded from all richt and commoditie of ſucceſſion to his father. Becauſe the Nepuoy lauchfully begotten be the eldeſt ſonne repreſentis the perſone of his father,& therefore *Iure repræſentationis* ſucceedis in his fathers richt: & conſequentlie is onely aire to his Gud-ſchir: like as his father wauld haue bene,gif he had not deceaſed before him. *Lib.2.c.Porrò.33.*

The like is to be vnderſtood of ane Neipce, or Neipces,ane or maa, begotten be the eldeſt ſonne alreadie deceaſed,quha ſuld be preferred to their father brother, anent the ſucceſſion of their Gud-ſchirs heritage: Except ſpeciall proviſion of tailzie be maid in favoures of the aires maill. *Quo caſu hæredes maſculi ſuccedunt,non diſpoſitione iuris,ſed exproviſione hominis.* *De nepte & filio*

ITEM,Ane Neipce or maa, of ane ſonne or dauchter,ſucceedis to their Gud-ſchir or Guddame,in the ſamin maner as their father or mother ſuld haue done,gif they were zit living. *Lib,2.c.Porrò 33.* And in this caſe it is to be obſerved, that quhen maa Nepces norane, borne of ſindrie Mothers ſucceedis, that the heritage ſuld be divided *ratione ſtirpis*,in as mony partes,as there is ſtockes,of quhom the ſaidis Neipces deſcendis and proceedis: As for example,gif there be ane Neipce begotten vpon ane dauchter,& twa Neipces begotten vpon ane vther dauchter,they all three ſuld ſucceede to their Gud-ſchir;bot the heritage ſuld not be divided in three partes, *ratione capitum*;bot in twa partes allanerlie,*ratione ſtirpium*: That is,of the twa ſiſters quhilkis ar the twa ſtockes, of quhom the ſaidis Neipces deſcendis: And ſwa the ane Neipce, gotten vpon the ane ſiſter, ſuld haue the ane halfe: and the vther twa, the vther halfe allanerlie of the heritage: Quhilk forme of ſucceſſion,is called *ſucceſsio in ſtirpes*, quhen the bairnes being maa in number, ſucceedis to alsmeikle allanerlie, as wauld haue perteined to their mother,gif ſchoe had bene living. *De nepte vna vel pluribus. Succeſſio in ſtirpes*

De linea obliqua collateralium.

QVHEN The ſucceſſion failzies in the richt line deſcendent,then they quha ar of the ſide line,or collateral ſuld ſucceed: as quhen the ſonnes and dauchters, and all perſones deſcendand of them lineall lie,failzies: Swa that there is nane of them to ſucceede: Then the Brother of him quha is deceaſed,ſuld ſucceede to him. *Lib.2.c.Deficientibus. 34.Illi enim qui ex linea recta deſcendunt ſemper præferuntur illis qui ex tranſverſa linea proveniunt,& illis deficientibus,hi ad ſucceſsionem admitti debent.lib 2.c.Porrò.33.* *De fratribus*

The heretage, and all moveable gudes perteining to the eldeſt brother,deceaſed without lauchfull aires of his bodie, perteinis to the ſecond brother, immediatlie neareſt to him, *Quia hæreditas gradatim deſcendit ad immediatè proximum.lib.2.c.Si ergo.23.c.Præterea 25.Leg.Burg.c. ſciendum.150.* *D. fratre nato maximo*

De fratre natu minori. Gif there be three brether german, borne of ane father, and ane mother; And the second brother deceasis without aires, procreat lauchfullie of his bodie: His elder brother succeedis to him in his landes, and immoveable gudes. And the younger or thrid brother is alluterlie excluded therefra. *Quia conquestus gradatim ascendit. lib.4.cap. Si tres 50. lib.2.Cap.Praterea 25.* Bot be the practicque of this realme, the aire-schip of the moveable gudes, perteining to the second brother, the time of his decease, descendis and perteinis to the younger, and thrid brother, as lauchfull aire: To quhome likewise perteinis the lauchfull tutorie of his said second brothers sonne, quhen it sall happen to fall.

De fratre natu minimo. Gif there bee maa brether nor ane, three, or maa in number, and the youngest of all happen to decease without lauchfull aires, gotten of his bodie. His immediat elder brother succeedis to him as lauchfull aire: Because conquest ascendis fra ane degree to ane vther immediatlie to the first degree. *Stat.Rob. 3. Cap.3. Stat. Wilhelm. Cap. Notandum. 24.*

De sororibus Failziand the brether, and their aires, gotten of their bodies, the Sister, or sisters, gif there be maa nor ane, succeedis *in Capita*, to their brother, in the samin maner, as the dauchters succeedis to their father. *Lib.2.c.deficientibus 34.de Iudic.cap.Si quis 24.*

De sororibus ex diversis matribus: Gif the brother deceasis without aires gotten of his bodie, his full sister gotten with him be ane father, and of ane mother (quhilk is called *soror germana ex eodem vtroque parente*) succeedis to all his heritage, and excludis all vther sisters, gif ony be gotten be his father, vpon ane vther wife, quhilk in Latine is called *soror consanguinea, Lib. quart. Capite Si homo 48.*

De sororum liberis After the decease of the sisters, their bairnes succeedis *in stirpes*, in the samin maner, as their mothers micht haue done, keipand alwaies the distinction betuixt the maill and femaill, be the quhilk the sister sonne excludis the sister dauchter. *Lib.2.cap.deficientibus 34.de iudic.c.Si quis 24. Quia (vt dictum est) mulier numquam cum masculo partem capit in hæreditate aliqua.*

De patruo eiusque liberis Failzieing the sister bairnes, and the aires gotten of their bodies, The father brother (*Avunculus, hoc est patruus*) And his bairnes descendand of him, succeedis. *Lib.2. Cap.Deficientibus 34. De Iudic. Cap. Si quis 24.*

De amita eiusque liberis, Failzieing the father brother, and the aires lauchfullie gotten of his bodie: The father sister (*Matertera, hoc est Amita*) and her bairnes suld succeede, conforme to the foresaide distinction, betuixt maill and femaill. *Lib.2.Capite Deficientibus trigesim. quart. de Iudicibus.Capite. Si quis 24.* Be the quhilk distinction, the father sisters sonne, excludis the fathers sister dauchter.

De iure accrescendi It is to be diligentlie observed, quhen maa persons nor ane (sik as mony sisters or neipces) succeedis, & it happen ony ane of them to decease with

without aires lauchfullie gotten of their awin bodies: the portion and part of the heretage quhilk perteined to the defunct, accreſcis to al them that remainis on life, and ſuld be devided amangis them all. *Lib. 2. c. Maritus. 32. de Iudic. Cap. Item nota. 115.*

Laſt of all, gif ony man gotten and borne in lauchfull mariage, deceaſis without ane lauchfull aire, and it cannot be knawin, quha ſulde ſucceede to him: Or gif it be in queſtion or doubt, quha is his richteous aire: Be the auld law of this realme, the King, or ony vther ſuperiour, reteined the landes in his awin handes, vntill the pley was ended, in favoures of the juſt aire: Or vntill it was knawin, quha was the lauchfull aire. *Lib. 2. Cap. vlt. 53.* Bot now, gif there be na lauchfull aire, to enter to the heritage: the King, as *vltimus hæres*, recognoſcis, & reteinis the ſamin as eſcheitte, *ad perpetuam remanentiam*, and may ſell and diſpone thereupon, at his pleaſure, as his awin proper landes and heritage. *vide Baſtardus.*

ERECTARE *Eſſonia ab aliquo facta*, to reckon, eſteeme, or judge Eſſonzies, or excuſationes, maid be ony perſon. *Quoniam attach. Cap. de brevibus 31*

ESSONIVM, ane Eſſoinzie or excuſation. *Lib. 1. Cap. 10.* Iam. 2. 13, Octob. p. 11. c. 55. Iam, 1. par. 9. c. 114. From the French worde *Exoin*, quhairof mention is maid in the Lawes of *Normandie. Lib. 9. Cap. 10.* And be *Molinæus in Stil. ſuprem. cur. part. 1. Cap. 6. de contumacia*, And be D. *Tho: Smith. lib. 2. Cap. 14.* of the commoun weill of *England.*

ESTOVERIVM, *Iter. Camer. Cap. Si quis captus 25. de Indic. Cap. 156.* Suſtentation, Nuriſhment: for the ſuperiour, during the time of the warde, ſuld ſuſteine the aire honorablie, conforme to the quantitie of the heretage, Lib, 2, c, *Plenam* 42. Iam, 4, p, 3, cap, 25. Quhilk is conforme to the *Engliſh* Law *in Magna Carta*, quhairit is ſtatute, That the wardar ſall giue the aire his reaſonable Eſtouuerie, Anno 9, Hen, 3, c, 12. quhair alſo it is written, that the relict of ony man, ſall haue his reaſonable eſtoverium, of the commoun gudes of her husbande that is deceaſed, vntill her dowrie be payed to her, *Vid. Quarentena viduarum.*

EVE *Et Treve, dicuntur nativi de avo & triavo, quorum maiores ſervitutem ſervierunt*: That is, ſik ſlaves or ſervandes, quhais father, gud-ſchir, grand-ſchir, and for-bears, hes bene ſervandes to ony man, and his predeceſſoures. *Quoniam attach. Ca, de brevibus 31, vid. Bondagium.*

EXITVS *Terræ*, The rentes, fruites, and profites of the land Lib. 2, Cap. *Si quis liberum 24, lib, 3, c, cum autem 6. quoniam attach, Cap, ſecus, 28, leg, Foreſt, c, Probata 87. Exitus iuſtitiariæ*, The profite or commodities of the juſtice aire, *Iter iuſtic. c. 3. 4. Exitus curiæ*, the cõmoditie & profite of the court, ſik as vnlawes and ſummes of money, payed be them quha ar amerciat, or convict of ony crime, or comes in will therefore, as is manifeſt be the forme of the precept, direct be the Chalmerlane, to the Schireffe, to take vp, and intromet with *exitus cameriæ*, or the profites of the Chalmerlaine aire. *Exitus hæreditatis de actorn Cap. 1*, is called the

fruites

fruites, rentes, profites, and emolumentes of the heretage, quhilk in the Engliſh law is called the iſſues of the heritage. *Mag. Cart. Anno 51. Hen. 3. cap. 17.* And ſiklike *Exitus tenementi*, ſignifies the mailles and dewties thereof, *Quoniam attach. c. Secus 29. Mod. ten. cur. c. 30*

EXTENT of landes, ſignifies the rentes, profites, and iſſues of the ſamin, quhairof there is twa kindes. The auld extent, and the new extent; For it appearis, that the rentall and valour of landes, hes bene taxed, and liquidat to ane certaine ſumme of ſilver, conforme to the profites and dewties, quhilk the landes payed at that time: Quhilk is called the auld and firſt extent, *tempore pacis*. Bot becauſe the revenues & dewties of landes be progreſſe of time, did increſſe and grow mair and mair: ane vther taxation and extent was maid in the time of peace, as the former extent, conforme to the profites augmented, as ſaid is; quhilk therefore is called the new, or ſecond extent: And properlie is the verie availe that the land is worth, and givis the daye of ſerving of the brieue. Ia. 3. p. 7. cap. 55. To the quhilk, the worde *Nunc*, conteined in the brieue and retour, ſuld be referred. For *tempore belli*, or in time of weire, there is na ordinar or certaine extent of landes, preſcrived be ony law: for in ſik time, either the landes ar waſt, and ar not laboured; or the landes-lordes ſervis in proper perſone: And it is na reaſon, that they ſuld baith make perſonall ſervice, and alſo pay extent or taxation. The lordes of the Seſſion eſteemis ane marke land, of auld extent, to foure marke land of new extent. *21. Mart. 1541.* Quhilk commounlie is called, the fourth maill; & ſuld be generallie vſed in retouring of landes to the Kingis Chancellarie, and vthers Chappelles: Albeit the ſamin is nocht perpetuallie obſerved. This diſtinction of the auld extent, and new extent, is neceſſar; For taxation of landes ar raiſed, conforme to the auld extent, and the reliefe of landes, is the retoured maill, according to the new extent. And ſik-like, quhen landes ar fallen in the ſuperioures handes, be reaſon of none-entres, he ſuld haue allanerlie, the retoured mail thereof, cõforme to the new extent. *vide* None-entres.

F.

FALSING Of doomes, Reduction of decreetes. *vide Sok.*

FARANDMAN. *De Iudic. c. 47.* Ane ſtranger or Pilgrimer, to quhome juſtice ſuld be done with all expedition; That his peregrination be not ſtayed or ſtopped. *Peregrini mercatores, dicuntur Farandman. lib. 4. c. 30 in lib. Sconenſi.*

FELONIA, ſignifies nocht onelie the falſed, or the contumacie of the vaſſall toward his over-lord, or of the over-lord toward his vaſſall. Bot alſo all and quhatſumeuer capitall crime in Latine. *ſcelus*, in Dutch, *Schelmerie*, or ony vtherfault or treſpaſſe. *Iter Camer. c. Si quis captus 25.*

Stat. Alex. ca. 2. lib. 2, Cap. Vltim. 54. As to hurt or aſſailzie ony man, with ſword, either edge, or vic. Ia. 1. par. 6. c. 97. Or ony leſſe or private crime, as ſuſpition of thieft, or quhatſumeuer fraud, deceate, commonlie vſed in contractes, pactiones, and vther conventiones. *Lib. 3. Cap. ex cauſa, 8. in fine. Cuia. lib. 1. de feud.* Writtis that felonie is not onelie rebellion, bot alſo perfidie, fraud, or ony kinde of fault. *perfidia, fraus, culpa, improbitas.*

FEODVM, *Feudum*, ſignifies nocht (as ſome affirmis) life-rent, in Latine, *vſus fructus*. For he that is ſaiſed in the life-rent of landes, is nocht vnderſtand to be ſaiſed *in feodo*, or in the fee thereof; For the ane is different from the vther. 7. Mart. 1561. The Gounteſſe of *Crawfurd*, contrair the Earle of *Crawfurd*. And ſik like, *Feodum* ſignifies nocht the ſuperioritie of landes. For gif ony maried man happenis to deceaſe, veſt & ſaiſed in the ſuperioritie of lãds, his wife ſuld not haue ane terce, or thrid therof.

Bot *Feodum* commonlie ſignifies, the heretable fee, and propertie of ony thing, and ſpeciallie of lands, as is commonlie conteined in brieues and retoures. *Cum aliquis dicitur obiiſſe ſaiſitus & veſtitus in terris, vt de feodo. Lib. 3. Cap. Cum verò 28. c. ſequens. 33. Stat. Rob. 3. Cap. 1.* Of the quhilk landes, the iuſt thrid, and reaſonable terce, will perteine to the wife, fra the time of her husbandes deceaſe, induring her lifetime. *vid. Quarentena viduar.* *Dom. feodi* or *feodi*: Is called the Lord of the ground, or land *Li. 2. c. Vſurarij 53.* Quhair *feodum & hæreditas*, ar baith ane, *& hæreditas damnati propter crimen dicitur pertinere ad dominum feodi, tanquam eſcheta. Item ſi quis condemnatus fuerit de furto, res eius mobiles, & catalla ſolent vicecomiti remanere: Terram autem ſi quam habuerit, dominus feudi habebit. Lib. 2. Ca. Foriſfactum 55.* He is called vtherwiſe, *Dominus fundi. Lib. 2. c. Defuncto. 69. Et feudum idem eſt quod fundus. lib. 2. cap. Mutua. 68.* And *actio fundi*, is ane action or pley of landes or heritage. *Lib. 1. Cap. 2. Feodum militare*, ſignifies landes halden be ſervice of warde, and reliefe. *Lib. 2. Cap. Maritagium. 56. Feudum laicale*, Is landes perteining to laicks and Temporall men. *lib. 2. Cap. 59.* As *feodum Eccleſiaſticum*, ſignifies, landes perteining to the Kirk, or Kirk-men. *Lib. 3. Cap. ſequitur 31. Cum ſeqq.* Swa be the lawes of this realme, all gudes and geare ar moveable, and called *Catalla*. Or immoveable, and ar called *feodum, hæreditas, terra, fundus, tenementum*. Fee or propertie, in latin, *dominium*, cãnot pertein to maa perſons nor ane, *Quia dominium vnius rei vno eodemque tempore non poteſſa in ſolidum penes plures.* And therefore, gif twa or maa perſons happenis to be infeft, conjunctlie in ony landes, the propertie perteinis to him in quha lifes & ſucceſſours, the infeftment reſolues. As for exãple, The husband, and the wife ar infeft in certeine landes, the langeſt liuer of them twa, & the aires gottẽ, or to be gottẽ betuixt thẽ, quhilk failzieing to his aires: In this caſe the husbãd is proprietar, & the wife is conjunct fear, or life renter. Bot gif it be ſaid (quhilk failzieing to her aires.) In this caſe the wife is proprietar, & the hubãd is cõjunct fear or life rentar.

Feodum, is taken for the fee, wage, or ſtipend, given to ane ſervand for his ſervice, as in the laws of *Kenneth Mak. e. de feod. offic. dom. reg.* quhilk otherwaies is called *liberatio*, ane livery. *vid. Liberatio.* Quhair anent the L. of ſecreit Councel, & checker, maid thir ordinances, as followes.

At Edinburgh the thrid of June. 1597.

FOr-ſameikle as the Lords of his majeſties ſecreit Councel, and checker, according to the ſpeciall power and commiſſion, given to them be his hieneſſe, and his eſtaites, quhilks conveened at *Dundie*, in the moneth of *Maij* laſt by-paſt; Hes thoucht meete and convenient, to ſet downe the prices of his majeſties ſignet, privie and great ſealles, of al infeftmentes, & vther ſignatures, quhilks ordinarlie ſuld pas throw them: And of the chalmer fees, quhilkis ſall be received hereafter, fra his hienes lieges, in maner following: That is to ſay; That the ſignet, according to the auncient cuſtome, ſalbe the rule to the privie and greate ſeales, in all infeftmentes, and vthers ſignatures, quhilks ordinarlie ſuld pas throw the hail three: And that the privie ſeale, ſal receiue na mair, nor the double of the price, ſet downe hereafter: for the ſignet, nor the greate ſeale, mair nor the quadruple of the ſaid ſignettis price, vnder the paine of deprivation of the contraveeners, fra the office & ſeale, quhilk he poſſeſſis. Prices of the ſeales.

Prices ſet downe to the ſignet, for letters and vthers writtes, quhilkis paſsis throw na vther ſeale.

FIrſt, for all ſorts of ſummondes of quhat-ſum-ever qualitie. —— vj. ſhillinges, viij. pennies.

For letters conteining, baith inhibition, and arreiſtment. xj. ſhil. viij. d.

For letters of law-borrowes, and vther criminal letters; how mony perſones ſoever be inſert. —— vj. ſhilling. viij. pen.

For miniſters letters zeirlie raiſed —— vj. ſhilling. viij. pen.

For all letters of horning of quhatſumever qualitie, except letters of law-borrowes, and criminal letters. —— xxj. ſhilling. viij. d.

For ane relaxation. —— vj. ſhillinges. viij. pen.

And gif maa nor ane be inſert, the like price of everie perſone to bee relaxed, or compoſitione for them, at the diſcretion of the keiper of the ſignet.

Prices ſet downe to the ſignet, for ſignatures paſsing the privie and great ſeales.

For ane Legitimation. —— vj. ſhillinges. viij. pen.

For ſignatoures of infeftmentes of landes, within fiue marke lande of auld extent. —— vj. ſhilling. viij. pen.

For ane remiſſion to ane perſon onelie —— vj. ſhilling. viij. pen.

And gif it be to maa nor ane, als mony halfe markes, as they ar perſones, or compoſition therefore, at the diſcretion of the keiper of the ſignet.

For ane infeftment of ane fiue mark land of auld extent —— xiij. ſhil. iij. d.

And for ſa mony maa marke landes, as the ſignatoure conteinis proportionallie: Providing, that quhat ever be the extent of the landes, the ſaidin not being ſtilled and barronnie, in the infeftment the

the heicheſt price for the ſignet, ſall not exceed —— l. ſhillings

For ane or ma baronnies of land conteined in the ſignatour, quhilks are nocht vnite in ane Earle-dome, nor Lord-ſchip, for the haile ſignatour —— iij. poundes.

For halfe ane baronnie, ſwa ſtyled in the ſignatour —— xxx. ſhillings

For ane Erl-dome, or ane Lord-ſchip of dignitie, having vote in parliament, including neuer ſa monie baronnies —— vj. pounds

For ane compriſing, quhilke exceedis nocht ane thouſande markes —— vj. ſhillings viij. pennies

And if the ſame exceed that ſum, to paye proportionally, providing that the heicheſt price exceed nocht —— l. ſhillings

For an biſchoprick, abbacie, or priorie, exceeding an thouſand pounds of zeirly rent to the poſſeſſour —— newvj. poundes

Being within ane thouſande poundes —— l. ſhillings

Nathing to be tane for reſeruations of life-rentes, conteined in the ſignatoures. In reſpect the reſeruation is na newe benefite to the receauer, except quhair the reſigner is a baſtarde. In the quhilke caiſe, reſpecting his Majeſties prejudice be the reſignation: quha vtherwiſe micht ſucceed to the landes reſigned, be the preſent poſſeſſours deceaſe, without lauchfull aires: ſik reſeruations ſall pay according to the price before ſet downe for the landes reſigned, comptand alwyes, the man and wife to be ane perſon. *Reſervations.*

Nathing to be tane hereafter for onie tailzies, except the foreſaide price, according to the quantitie of the lande reſigned, in reſpect the Fear may alter his tailzie at his pleaſure, except quhair the Fear that reſignis the landes is baſtarde. In quhilke caiſe, the like price may be tane for euery perſone conteined in the tailzie, as it is ſet downe for the quantitie of the land reſigned. *Tailzies*

For infeftmentes conteining patronages of beneſices neuer before diſponed, nor annexed to thay landes or newe infeftmentes of heritable offices: The land is to paye according to the quantitie and rate before ſet down, and the patronage gifit be of ane onely beneſice, the ane halfe of the duetie of the landes. Gif their be maa, to pay the ſaid haill price of the landes for the ſaides patronages. Quhilk price, the keeper of the ſignet ſall not exceed. Sik-like for new and heritable offices. *Beneſices.* *Offices*

Prices ſet downe to his Hienes Priviе ſeale, to be tane hereafter, of ſik giftes and vther ſignatours, quhilk paſsis the ſaid ſeale allenerly.

FOr eſcheits of zeemen men, and vther mean perſons —— xx. ſhillings.

For eſcheits of landed gentleme & ſubſtantious burgeſſes — xxx. ſhil.

For eſcheits of Baronnes. —— xl. ſhillings

For eſcheittes of Erles and Lordes. —— iij. pounds

For their life-rentes, *reſpectiue* —— dowble price.

For preſentations to Vicarages ——— xx. ſhillings.
For preſentations to perſonages ——— l. ſhillings.
For reſpettes to zeamen men, & vther meane perſons xxx. ſhillings
For reſpets to landed gentlemen, and ſubſtatious burgeſſes. —xl. ſhil.
For reſpettes to Barronnes. ——— iij. poundes.
For reſpetties to Erles and Lordes. ——— v. poundes
And gif there be ma perſons conteined in the ſignature, to pay *per capita*, according to their rankes.
For the wardes & mariages, non-entreſſes & relieves of landed men, vnder Barronnes, included in ane ſignatour. ——— iij. poundes.
For the wardes, mariages, non-entreſſes & relieves of Barons vj. puñ.
For the like of Erles and Lordes. ——— x. poundes.
For the warde allane of gentlemen, ——— xxx. ſhillings
Of Barronnes ——— iij. poundes.
Of Erles and Lordes. ——— v. poundes.
For the mariage allane of ſimple gentlemen. ——— xxx. ſhillinges.
Of Barronnes ——— iij. poundes.
Of Erles and Lordes: ——— v. poundes.
For the non-entreſſes allane of meane landed men ——— xx. ſhillinges.
Of Barronnes ——— xl. ſhillinges.
Of Erles and Lordes: ——— iij. poundes.
For giftes of prebendaries or chaplanaries. ——— xxx. ſhillings
For tutories ——— xxx. ſhillinges.
For the multitude of denuntiations included in ane ſignatour of eſcheitte, or life-rent, na payment, but for the gift only. In reſpect they can import but ane gift of eſcheit allanerly.
For preſentations to prelaties, legitimations, ſignators of infeftments of Baronnies, & vther landes, remiſſions, and ſik vther writtes, as paſſis firſt the ſignet. The keepar of the privie ſeale, ſall take for them allanerly, the double of the price, quhilkilke an of them payed to the ſignet.
In tailzies, reſervations, patronages, heritable offices, erections in fire Burrowes and ſiklike, to take payment, according to the order and proportion of the ſignet.

Anent the Chalmer-fees.

IT is ordained, That na ſignatoures hereafter, ſall pay Chalmer-fee, except reſignations, and confirmations, irredemable allanerly: and of ſik landes as are neither of his Majeſties propertie, nor temporalitie annexed, quhilks are declared to be free of all ſik fees, in time cumming.

Prices ſet downe to the great ſeale.

THat the keeper of the great ſeale, exceede not the quadruple of the ſignet, or double of the privie ſeale, vnder the foreſaid paine.

That

That to this effect the keiper of the ſignet, ſall vpon the back ſide of the prent of the ſignet, ſet downe the price quhilk he receives for everie precept, and for all vthers letters after his name. Likewaies the keiper of the prievie ſeale, his price for precepts, and vther letters after *per ſignaturam*: that theirby the keiper of the greate ſeale, pretend na occaſion of ignorance. Sik-like that the ſaid keiper of the greate ſeale, ſet down his price in the fore-face of everie tag, quhairvnto the ſaid ſeale ſalbe appended. And that theirafter their be na drink-ſilver exacted fra the partie, vther nor he will be contente to giue at his pleaſure and diſcretion. And ordains ane herauld, maiſſer, or vther officiar of armes, to paſſe to the mercat Croce of the ſaid burgh of *Edinburgh*, and their be open proclamation mak publication, and intimation of the premiſſes, to all & ſindrie his Hienes lieges, quhairthrow nane pretend ignorance theirof. As alſwa, to command and charge the keipers of the ſignet, prievie, & greate ſeales, Iſchers of his Hienes chalmer, and all vthers quhome it effeiris, to conforme themſelues to the will and direction of the ſaides commiſſioners, ſignified to them in maner foreſaid: & on nawaies tak vpon hand to alter or contravene the ſame in onie point hereafter, as they and ilke ane of them will anſwer to his majeſtie, vpon their obedience at their vttermoſt charge and perrel, and vnder the paine of deprivation of them fra their offices, certifieing them & they failzie. That they ſalbe deprived fra their ſaides offices, and vther waies punſhed in their perſones as effeiris.

Apud Edinburgh quarto Iunij, Anno. 1597.

THe Lords of ſecreit Councell and Checker, following the commiſſion given to them be his Hienes and his Eſtaites, laitlie conveened at *Dundie*, anent the ordour taking with the exhorbitant prices of all ſortes of writes and letters, vſuall amang the lieges, and like waies of the ſeales, regiſters and chalmer ſie, quhilk a greate number of the ſame mon paſſe, procuring daylie baith priuate grudges and publick exclamations againſt the tolerance and with gang, given to ſik ſhamefull extorſion & abuſe, highlie to his Majeſties diſhonour and offenſe, and to the manifeſt vndoing of the puire anis of this Realme, conſtrayned to haue adoe with the ſaides writes: Haue for remeid of that abuſe, decerned and ordaned in time comming, and quhill a mair particular and ſolide ordour may be taken theirin. That all and quhatſoeuer Clerkes of ſeſſion, Iuſtice, ſecret Councell and checker, Clerkes to quhatſoeuer Commiſſar, Admiralles, Schireffis, Stewartes, Baillies of regalitie, & royaltie, Proveſtes and Baillies of quhat-ſum-ever his Hienes burrowes, and of all vther courtes or Iudgementes within this Realme, all writers to the ſigner, privie & greate ſeales, all keipers of quhatſoeuer rolles, Regiſters and recordes, all publicke notares, and vthers writers quhatſoeuer, quha ſall hereafter regi-

ſter and inroll, forme, extract, writ, or giue out for payment, to ony of his hienes lieges, ony ſignatour, contract, obligation, decreet, act or ordinance of ane courte or judgement, chartour, ſaiſing, or vther evident, billes, letters, or vther writtes quhatſum-euer of any importance to the receiuer: Sall ſubſcriue with their handes the ſaid writ, and ſubjoyne to their names, the juſt and ordinar price; quhilk they receiue fra the partie for their paines. To be a teſtimonie of their diſcretion, in valueing of their travelles taken in the ſaidis writtes, and to giue further licht to the ſaids Lords, quhat conſtant prices they may ſet vpon the like in time to come, vnder the paine of deprivation from their offices, & puniſchment of their perſones at his Hienes further pleaſure, incaiſe of failzie. And ordainis letters to be directe, To make publication of the premiſſis to all and ſindrie his Hienes lieges, quhairthrowe nane pretende ignorance thereof.

FERCOSTA, ane Italian worde: Ane kinde of ſchippe or litle Boate. In ane priviledge granted to the Burgh of *Dundie*, for reparation & bigging of their Porte & Haven, be King *Iames* the ſeconde, in the zeir of God, an thouſād foure hūdred, fifty aucht zeires, & of his reign, thet wentie twa zeire: Mention is maid of ane *Fercoſt*, quhilk is inferiour in birth and quantitie to an ſchip, becauſe the impoſte and taxation laid vpon ilke ſchip is ten ſchillings, and vpon the *Fercoſt*, twelue pennies, & of everie Crear, buſch, barge, and ballinger, fiue ſchilling, and ilke great boat ſex pennies.

FERDINGMANNVS, ane Dutch word, an penni-maiſter, or Theſaurar. *Stat. gild c. 5.*

FIDELITIE, maid to ſuperiours, and ouer-lords. *vid. Homagium.*

FINIS, finance, or compoſition maid with theeues. *Statut. 2. Robert Bruyſe. Item 9.* In the quhilk place, it is called *rachetum*, or thift boat. *Finis curiæ*, ane compoſition quhilk onie man giues in an court, ſik as the juſtice aire, to the King, *In regiſtro 28. December*, ane thouſande, fiue hundred fourty an zeirs, the Theſaurar contrar the burgh of Perth. *Finem facere cum rege*: to fine with the King: Or to make ane finance, and ſatisfie him for ony treſpaſſe committed againſt him or his lawes. *Aſſ. reg. Da. cap. 2. lib. 4. cap. 3. c. ſi vir. 16.* or *finem reddere regi*, to pay an fine or compoſition to the King for ane crime, ſik as thift-boat. *St. 2. Ro. Br. c. item ordinat. 9. Finem facere cum molendinario de multura*, To agree & compone with the millar for the multer. *Statu. Wilh. cap. item ſtatuit quod detentor. 11.*

FIRMARIVS, ane mail-payer, ane mailer, or mail-man. *leg. burg. c. ſi firmarius 58. quo. attach. c. nullus 26. Firma* ſignifies the dutie quhilk the tennent paies to the landiſ-lord, quhidder it be ſiluer-maill, victuall, or vther duetie. *In ſtatutis gild. c. 48.* In the quhilk ſignification, it is commonly vſed in the French lawes.

FORENSIS, from the French word *Foraine*. In the burrow-lawes of this realme, ſignifies ane vn-free-man, quha dwellis not within burgh or out-dwelland man. And therefore is called *rure manens*, quha dwel-

dwelland aland-ward, hes na priviledge, or immunitie within burgh. Commonlie all ſtrangers are called *Forinſeci*, or *foreines*; vther-wais *aduena*. Quhair-anent it is ſtatute, that na burges dwelland in burgh, ſall harbourie onie ſtrange man in his houſe, langer nor ane nicht, without borrowes, & caution. *leg. burg. Cap. nullus in burgo 88. quoniam attach. Cap. nulli 47. ſeruitium forinſecum* ſignifies ſik ſervice as the vaſſall, or tennent, ſuld doe to his over-lord and maiſter, fra hame, or in time of weir-faire. In England they quha are nocht borne Engliſh-men, are called aliens: Quha injoyes nocht libertie within the realme, except they be *Denized*, quhilk word appeares to be driven *a Danis, quaſi daniſatus*, that is maid lauchfull and free, as onie *Daneſ man* was, quhen the *Danes* did occupie and poſſeſſe ane greate parte of that Realme. And in France they are called *ambani, or albini, quaſi alibi nati*, ſtrangers, nocht borne within the Realme of France, quha their fore deceaſeand in France, without lauchful ſucceſſion of their bodies, hes na power to make teſtament. For their gudes and geare, are nocht given to their aires, or ſucceſſoures, bot are confiſcat to the Kingis vſe, be the law quhilk is named, *Albinage, ius albinagij. Cheſſan. in conſuetud. Burgund, Rubric. 21. §. verb. des confiſcationi. Nu. 37.* In the acts of Parliamente. *Marie* p. 8. Cap. 66. it is called *droict d' Aubeyne.*

Rurema nens.

Seruitium forinſe cum.

Denized.

Ambani, Albini, ius albinagii.

FORESTARIVS, ane foreſter, or keiper of wooddes, to quhom be reaſon of his office, perteinis the bark and the hewen branches. And quhen he rides throw the forreſt, hee maie take ane tree als heich as his awin head. *leg. foreſt. Ca. 10. Foreſta*, is called ane large wood, without dyke or cloſure, quhilk hes na water. *Sylua* is ane wood neare adjacent to ane ſlude of water: bot quhen the ſamin is incloſed with dike or hedginges, is called ane parke, *Cheſſa. in conſuetud. Burgund. Tit. des foreſts 13. in prin. per. gl. in. c. cum dilecti. de donationib⁹. Felin in c. Rodolph⁹, extr. de reſcript. Nu. 21.* Quhair *foreſta*, is called a place, quhairin are included wylde beaſtes and quhair ſum hes libertie of hunting. Bot quhair their is ane flude of water, it is *Sylva*. And beand circled about, and environed with watters *Inſula*. And incloſed with dikes or hedgeinges, *parcus. Ia. Andr: in d. Cap. dilecti. Infeodatus in liberam foreſtam*, infeft in free Forreſt, hes power to hunt, halk, and cutte trees, quhilk we call *poteſtatem venandi, aucupandi, & ſecandi*, quhilk libertie na perſon maie vſe bot be ſpeciall licence granted to him. *vid Varenna vid. Veniſon. vid. Werd.*

Foreſta

Sylva

Parcus

Inſula

Libera foreſta

FORISFACTVM, ane vnlaw, quhilk vtherwaies is called *amerciamentum. lib. 1. c. dos autem 19. Stat. Alex. c. ſi quis conqueſtus. 9. lib. 4. c. 3. leg. burg. c. foriſſactum 42. vid. Amerciamentum.* It is taken for fornication committed be ane woman being ane aire femaill within waird, *vt cum fœmina dicitur foriſſacere de corpore ſuo*, to forfair, or abuſe hir bodie. *vi. Putagium.* Item it ſignifies quhatſumever fault, treſpaſſe, and crime, and is called forefault in the Actes of Parliament. Iam. 2. 2. Auguſt. c. 6. And quhair it is written *pro vno foriſacto non debet eſſe niſi vnum amerciamentum. leg. burg. c. de vno. 3.* In ane vther place it is ſaid, *pro vno delicto, non debet*

bet eſſe niſi vna miſericordia· *Aſſ. reg. Da·c. ad hoc 28.* That is for ane fault their ſuld be bot ane vnlaw· And in the Engliſh Lawes, *Hen. 3. in carta de foreſt, c, 15,* all outlawes for the Kingis foreſtes, ſall returne to his peace, & ſall find to him ſure pledges, that they ſall nocht do onie fore-

Forisfactum plenarium Regis.

fault, or wrang in his foreſtes. *Forisfactum plenarium regis,* may be extended to the deth, as *plenaria iuſtitia,* quhilk ſuld be execute vpon him quha ſtops the ſleuthhound, in perſewing of theeves and thieft, lib. 4. c, *& ſi quis,* 35. And it is ſtatute that nane ſall ſtop the Kingis burgeſſes to bye and ſell freelie throw-out all the partes of the Realme, *ſuper plenum forisfactum regis; leg, burg, c. ſi burgenſes, 141. vel ſuper plenariam forisfacturam, lib 4, c, Statutum, 38. Stat. Wilh. c. Item ſtatuit. 19.* conforme to the quhilk conſtitution, he quha troublis or moleſtis merchandes dwelling within burgh, to vſe their freedome & priviledges: may be accuſed as an oppreſſour of the Kingis lieges. Ia. 5. p. 4. c. 26.

FORISFAMILIARI, forisfamiliat, put furth of his fathers houſe, or maid free, and delivered furth of the fatherlie power, the ſonne is called to be forisfamiliat be the father, quhen he with his awin conſent and gud will, receivis from his father onie landes: and is put in poſſeſſion theirof, before his fathers deceaſe. *lib, 2. c, porró, 33,* and is content, and ſatisfied therwith. Swa that he nor his aires maie nocht claime or crave onie mair of his fathers heritage. *de Iudicibus capit· Item nota, 115.*

FORESTALLERS, *vid, Regraters.*

FORTALITIVM Ia, 2, p, 3, c, 3, *Stat, 2. Rob. Br, c, Item ordinatum* 8. Ane fortalice, ane Caſtell, and properlie ane houſe or Towre quhilk hes ane battelment an barmekin, or an fowſie about it 7, Feb, 1566. Lord *Fleming* contrair *Iames Roſſe.*

FORTHOCHT fellony, *præcogitata malitia,* quhilk is don & commit ted wittinglie and willinglie, after deliberation and ſet purpoſe, and is different from *chaudmelle. quia vt ſcribit Cicero. l. 1. offic. in omni iniuſticia, per multum intereſt vtrum perturbatione aliqua animi, quæ plærunque breuis eſt, & ad tempus: an conſultó & cogitatò fiat iniuria. Leviora enim ſunt ea, quæ repentino alicuo motu accidunt, quàm ea quæ meditata & præparata inferuntur.*

FOSSA, ane pit, or fowſie. *Furca,* ane gallous, in Latine *cabalum,* quhilk

Cabalum.

was firſt inſtitute and granted be King *Malcolme,* quha gaue power to the Barrones to haue ane pit, quhairin wemen condemned for thieft ſuld be drowned, and ane gallous quhairvpon men thieves, & trespaſſours ſuld be hanged, conforme to the doome given in the Barron Courte thereanẽt. *Hector Boetius. l. 12. Erectio furcarum eſt meri imperij, et altæ iuſticiæ, et ſignificat dominium aeris, quia ſuſpenſi pendent in aere. & merum imperium conſiſtit in quatuor, ſicut ſunt quatuor elementa. In aere, vt hi qui ſuſpenduntur. In igne, quando quis comburitur propter maleficium. In aqua, quando quis ponitur in culeo & in mare proiicitur, vt parricida: vel in amnem immergitur, vt fœmina furti damnatæ. In terra, cum quis, decapitatur & in terram proſternitur. Cheſſa. in conſuetud. Burgund. Rubric. 1. §. 1. verb au territoire. Nu. 14. & rubric. 1. §. 8. Nu. 2. Porró iuriſdictio dicitur notio, quæ iuri magiſtratus competit. Miſtum imperium,*

Merum imperium,

Iuriſdictio miſtum imperium

eſt

eſtpoteſtas quæ iuriſdictioni ineſt. Merum autem imperium eſt ius gladij, vel alicuius grauioris coercitionis nominatim lege conceſſum. Cuia. l. 4. de. feud. tit. 19.

FRIEBORGH, *liber plegius, vel fideiuſſor, quem Galli francum plegium vocant.* In the auld Britton lawes, *Bopher vel Bores*, is that quhilk we cal borrows, borgh, or cautioner. And *Aluredus* King of England, diuided England in *ſatrapias, centurias, & decurias*, as ſalbe declared in the worde Schiref: and ordaned that *decuria*, ſuld comprehend ten perſones, and *centuria* ſuld conteine 100. perſons, quhairof ilk ane was cautioner and ſouertie for vthers: in ſik ſort that the haill number, and ilk ane of them, was anſwerable for the fault and deede of onie ane of them, & ſwa was called *free-borgh, free-pledge*, or cautioner. *vide antiquas leges Brittonum.*

FVRCHE, ane word, quhairof I find na mention in the written lawes of this Realme, nor of onie vther cuntrie: And zit is vſed in the forme and ordour of the Chancellarie, from *furca*, ane forke. For quhen onie perſon is ſerved and retoured narreſt, and lauchfull aire to onie of his predeceſſors, of ony lands haldenin chiefe, of ony vther ſuperior thē the King: The directour of the Chancellarie, cauſis his Clerkes direct to the ſaid ſuperiour three preceptes, commanding him to giue ſaiſing to the perſon retoured, of all and ſindrie the landes, conteined in the retour, he doing therfore to his ſuperiour, all quhilk he aucht to do of the Law. Of the quhilk preceptes the ſecond is called *Meminimus a forma verborum qua præceptum concipitur*. For the precept bearis that the King remembers, that he directed his firſt precept and command, quhilk was nocht obeyed, quhairof he mervailis: And therefore zit as of before commands the ſuperiour to give ſaiſing. The 3. precept is called *furch*, for quhat cauſe I knaw nocht certainlie: Bot like as ane fork hes twa graines, this precept hes an alternatiue command of twa parts, for the King commandis the ſuperiour to give ſaiſing, or elſe he certifies him, he wil command the Schireffe to giue the ſamin. *Itaque hoc præceptum eſt furcatum, vel biſurcatum, in eadem ſignificatione, qua barba biſurcata*, quhilk is divided in twa taits or parts. And in French *furche*, is called cloven futted, or forked.

Meminimus

G

GALNES, *lib. 4. c. ſi. quis. 37. c. ſtatuit. 66.* Ane kind of mendis, aſſithment, or ſatisfaction for ſlauchter. Of the quhilk word I finde na mention in onie vther place, or law of vther cuntries.

GANGIATORES, *Iter. camer. c. gangiatores. 14.* ſignifies them quha ſuld mark the claith, breade, or barrelles before they be ſauld, with the mark of their office: or tryis or examinatis al meaſures, & weichts, baith dry & weete, for the French *Iage*, is that quhilk we cal jug, met or meaſure

GARBA *ſagittarum*, an ſchaife of arrowes, conteining 24. vtherwaies called *ſchaffa ſagittarum. Stat. 2. Rob. Br. c. ordinatum eſt. 27.*

GARCIFER ane French word. Ane *Garſon*, an ſervand quha ſervis in the myln, ane myln-knave. *leg. burg. c. quicunque. 64.*

GILDA, an ſocietie and cumpanie of merchandes. For in the auld *Britton* lawes. *gilder* ſignifies the ordour or ſocietie of religious men, or of craftes-men. *Vide antiquas leges Brittonum, verbo Contubernales.*

GIRTHOLL

GIRTHOLL, girth, sanctuarie, in latin, *asylum, ass. reg. Da. c. si quis in aliquo. 27. Asylum* is driven from the greeke, α, *particula priuatiua, et* σιλαω *h. e. traho. gl. in. l. si quis. 17. ff. de ædilit, edict.* Because it is not leasum to draw furth onie person furth of the *girth*. Quhairanent sindrie actes of Parliament are maid, conforme to the law of God. *Exod. 21. 13. Ioshua. 22. 1. &c.*

GLEBA, ane gleibe, given and granted to Kirk-men and Ministers of the Evangel. *vid. Mansus.*

GVERRA, *lib. 2. c. sunt quidam. 72. Stat. 1. Rob. Br. c. 17. Stat. 2. Ro. Br. c. ordinatum est. 27.* Vtherwaies called *Verra*, battel, weir. And signifies nocht onelie publict weire and hostilitie, quhilk is proclaimed and denunced be the lauchfull authoritie of the Prince: Bot also private deadlie feede, quhen onie particular person wauld revenge onie privat injurie, done to him. For it is statute be K. *David* the second, *quòd nullus de cætero moveat guerram contra vicinos suos quoscunque, sub pœna plenariæ forisfacturæ*, 6. Novemb. 1357. Mention is maid of courtes of *Guerra*, Ia, 3, p, 8, c, 69, quhilk is were halden be schireffes, Stewards, Baillies, and vther Officiars. Bot quhat was the speciall jurisdiction belangand theirto, I knaw nocht: and findis na mention theirof in onie vther pairt of the lawes of this Realme, alwaies as it appearis that they were halden be the ordinar judges foresaides, anent strife, debates, crimes and trespasses committed betuixt familiar and domestik persons, subject to ane maister, within the jurisdiction of the saides judges conforme to the lawes of the fewes in *§. vl, de pace tenend, li, 2, de feud, Si ministeriales alicuius domin, inter se Guerrã habuerint: comes siue iudex, in cuius regimine eam fecerint, per leges & iudicia, ex ratione prosequatur.* Quhilk forme of courtes being particular justice courtes, was prejudicial to the jurisdiction of the justice & his deputes, and grieuous to the lieges of this Realme, and theirfore are discharged be King Iames the thrid, in the place foresaide.

Verra

GYSARVM, ane hand axe. *Leg. Forest. Cap. sciendum est. 67.* quhair it is statute and ordained, that all men of the age, betuixt sextie, and sexteene, sall haue armour, conforme to the quantitie, and the valour of their landes, and moveable gudes, that is, he quha hes fifteene pounde land, or fourtie markes in moveables, sall haue ane horse, ane habergeon, ane bonnet of iron, ane sword and ane dagger. And he quha hes fourtie schilling land, or abone, within ane hundreth shilling land, sall haue ane bow, arrowes, dagger and knife. And hee quha hes lesse then fourtie shilling lande, sall haue *Gysarum*, quhilk is called ane hand axe, ane bow, and arrowes. And all vthers, quha suld, or may haue armour, sall haue ane bow and arrowes.

H.

HAIMSVKEN, *lib, 4, c. raptus, 9, in fine, quo, attach, c, de cætero, 48, Stat. Wil, c, Item, stat, 9,* Ane Dutch word. For *Haim* signifies an house or habitation, quhair ane dwellis, and quhair he hes his winning, rysing and

and lyihg. As we ſay, an man is at hame, or nocht at hame. In the quhilk ſignification *Cuninghame*, is called the Kingis houſe or hame, ſpeciallie quhen the Kinges of this Realme, quha of before did dwell in the Iles, came to the maine land to dwell, and remaine in *Doundonald*, and vther places. *Suchen* in the *Germane* toung, ſignifies to ſeike, or ſearch, perſew, or follow, as quhen ane gives vp kindnes to ane vther, hee ſayes. *Harr, harr, Ich wol euch ſuchen*, ſwa hame-ſuchen, or hame-ſuken, is quhen onie perſon violently, without licence, & contrair the Kinges peace, enters with in an mans hous, or ſeiks him at the ſame, or aſſailzies his hous (as is writ ten in the beſt buikes) quhilk crime is puniſhed, as raviſhing of wemen. *quo attach. c. ſi quis aliquẽ. 50. Stat. Wilh. c. Item ſtat. 10.* quhilk is eſtemed an greate crime contrair the common weill, quietnes, and peace of the cun trie, *quia vnicuique domus ſua eſt tutiſſimum refugium: Ideoque de domo ſua nemo debet extrahi. l. ſed & ſi. 21: ff. ſi quis in' ius vocat, quod verum eſſe in cauſa civili, non autem in criminali, notatur in gl. ibidem, quid ſit domus. vid. l. 1. ff. de agnoſcend. liber.*

HAWBERT, there is foure maner of halding of landes outwith Burgh. Sum landes are halden be the Kirk *nomine pure eleemoſynæ*, & paies nothing bot *deuota animarum ſuffragia*, as was vſed in the time of blindnes and papiſtrie: vther are halden in few, or few-ferme of the King, Kirk, Barrones, or vthers, quhilkis payes ane certaine dewtie called *feudifirma*, fewferme: vther are halden blenche, be payment of ane pennie, an roſe, ane paire of guilt ſpurres, or ſum vther dewtie quhen it is asked, in name of blenche, or *nomine albæfirmæ*: vther landes are halden be ſervice of warde & relieve, and the aire heirof beand *minor*, is in the gairde, that is wairde, cuſtodie, and keiping of his ſuperiour, with all his ſaides landes vntill he be *maior*, and of perfite age. And ſiklike his mariage beand *Maior* or *minor*, and nocht maried before the deceaſe of his predeceſſour per teinis to his ſuperiour, *vid. Varda*. Landes halden in this laſt forme and maner, are called *feodum de Hauberk*, or *Haubert*, or *feodum militare, demaritag. c. diverſa. 7. aſſ. reg. Da. c. ſtatutum fuit. 32.* Or *feodum Hauberticum*, or *feodum loricatum*. Becauſe it is given vpon condition, that the vaſſall poſſeſſour theirof, ſall cum to the hoiſt and armie, with *Iak*, and armes: for *lorica a loro*, ſignifies ane abulzement maid of cordes, and *Haubert*, ſignifies ane kind of armour, maid of mailzies, or circles like ringes, called an *Hauber gion*, conform to the common proverb, manie mailzies makis an *hauber gion*, monie littles makis an meikle. Of the maner of *tenures* in the Engliſh lawes reade *Litleton*, and in the *Normand* lawe. *lib. 5. c. 3. cum ſeqq.*

De quatuor modis tenendi terras.

Lorica.

Haubergeon.

HAIMHALDARE, *vindicare, actione reali repetere*, to repeit & ſeeke reſtitution of proper gudes & geare, & bring the ſamin hame againe. *quo. attach. c. 4.* as lauchfull and *haimhald* cattell. *mod. ten. cur. c. 13.* & *haimhald lint*, or *haimhald* hemp, is that quhilk growis at haime, within this realm & is opponed to lint, & hempe quhilk is in brocht furth of vther cũtries *hamhaldatio catallorum*, is quhen onie man ſeikis reſtitution to be maid to him of his awin guds and geare, wrangouſly taken fra him, quhairof frequent

quent mention is maid in the auld lawes of this Realme. And he quha ſeikis the ſaid reſtitution, ſuld ſweare in this maner, ane buike beand put within the hornes, or vpon the fore-head of the beaſt, that is clamed before twa lauchfull witnes, that the ſaid cattell acclaimed be him did wander awaie from him, and that the ſamin was nocht given, ſauld, or onie maner of waie annalied be him to onie kind of perſon. *vid. Catalla.*

HARA *porcorum. vid. Creſſera.*

HERREZELDA, is the beſt aucht, ox, kow, or vther beaſt quhilk ane husband man poſſeſſour of the aucht pairt of ane dauach of land: (foure oxen gang) dwelland & deceaſand theirvpon, hes in his poſſeſſion, the time of his deceaſe, quhilk aucht and ſuld be given to his Landiſlord, or maiſter of the ſaid land. *lib. 4. c. ſi quis. 22. aſſ. reg. Da. c. ſi quis. 41.* for *Herr* in dutch, in latine *herus, dominus*, ſignifies ane Lord, or maiſter, and *zeild* is called ane gift, tribute, or taxation, as in the auld actes of Parliament maid be King Iames the firſt, it is written, that ane *zeilde* was gaddered, for the releiſe of him out of England. And ane vther *zeilde*, was collected, for reſiſting the rebelles in the *North*. Swa *Herrezelda*, is ane gift given be onie man to his maiſter and Lord, quhilk ſuld be his beſt aucht 17. October. 1470. Quhilk is conforme to the aulde lawes. *li. 2. c. tenentur. 35.* quhair ilk perſon makand his teſtament, ſuld recognoſce, and acknawledge his maiſter with the beſt thing he hes. Swa it is manifeſt that the *Herrezelde* is given, be reaſon of the tennents deceis to his maiſter, as ane gift, for acknawledging, and honoring of him, and therefore in the civill law is called, *laudemium, a laudando domino*. Item in the auld Saxon, and Dutch language *Herr*, is ane hoiſt, armie, or weirfare. Swa (as ſum thinkis) *Herrezelda*, ſignifies that quhilk is giv̄e to the Lord, or maiſter paſſing to the hoiſt, or be reaſon of weirefaire. For ſik ſmall husband men having onely foure Oxen-gang of land, and thereby, be reaſon of their povertie, nocht able to paſſe to weirfare in proper perſon, ſuld help their maiſter, paſſand fordward theirvnto: like as *Heriſchulda*, is the paine of him quha obeyis not the proclamation maid for weirfare, for *ſchuld* is *debitum* or debt, and *heribannum* is ane charge or proclamation maid for weirfare. *Curia lib. 1. de feud.*

Here. Zelde.

Laudemium,

Here.

Heriſchulda.

Herib. um.

HILDA, *terra, Hida terra*, an pleuch of land. *vid. Carrucata.*

HOMAGIVM, *dicitur quando aliquis promittit ſe eſſe hominem alicuius domini, et ſtare et habitare, vbi voluerit dominus. Et ſuper hoc facit homagium, id eſt promiſsionem, vt ſit ſuus homo. Vel homagium dicitur fidelitas hominis, pro rebus temporalibus facta domino. Cheſſan. in conſuetud. Burgund. rubric 3. §. 1. verb. des fieds. et in §. 3. nu. 3.* It is a band of man-rent, quhen ony perſon promiſis to ſerue ane vther, in ſik ſort, that he ſall be friend to all his friends, & foe to all his foes, ag ainſt all deadlie. *Lib. 2. c. prædictis. 60. le. Foreſt. c. quando 60.* It is therefore called *hominium*, and ſulde be maid be the vaſſall being *minor*, or *maior*, to his ouer-lorde. *Lib. 2. d. Cap. 60.* And the ſamin beeing maide gener ally, with-out exception of any man, is called

called *homagium cum ligeantia factum. vid. Ligeantia*, homage differrs from fidelitie, firſt be reaſō of the perſones makeris theirof, for weemen makis na homage, bot onelie fidelitie. *lib. 2. c. prædictis. 60.* Becauſe Homage concernis ſervice ſpecially in weirfaire, to the quhilk weemen are nocht ſubject. And likewaies conſecrat biſhops, makis onelie fidelitie for their landes, and barronies, *lib. 2. c. ſieri. 61.* In this forme, I ſal be leill and trew, to zow my liege Lord, and ſchir N. King of Scotland, and ſall nocht heare zour skaith, nor ſee it, bot I ſal let it at my power, and warne zow theirof, zour Counſell conceill, and heill, that ze ſchaw me: The beſt counſell that I can to giue zow, quhen ze charge me *in verbo Dei*, and as helpe me God, and the halie Evangell. The ſecond differēce is be reaſon of the forme and maner, for he that makis fealtie, kneillis nocht on his kneis, bot he that makis homage kneilis down: vtherwaies the forme of homage maid be barrones to the King, and the forme of fidelitie maid be them to the King, are nocht far different, for the forme of homage maid be them is this: I become zour man my liege King, in land, lith, life and lim, warldlie honour, homage, fealtie & lawtie, againſt all that liue and die. Zour counſell conceiland that ze ſchaw me: The beſt counſell ſchawand, gif ze charge me: zour skaith or diſhonour not to heare or ſee Bot I ſall let it at all my gudlie power, and warne zow theirof. Swa help me God. The forme of fidelitie maid be the barrones to the King is this I ſall be leill and trew, to zow my liege lord, Sir. N. King of Scotland. I ſall neyer ſee zour skaith, nor heare it, bot I ſall let it at my power, and warne zow theirof. Zour counſell ſchawin to me, I ſall conceill: the beſt counſell I can, I ſall giue zow, quhen ze charge mé theirwith, ſa help me God. *Fiunt autē Homagia de terris et tenementis libris tātummodo et ſervitijs: de redditibus, ſignatis in denariis, et aliis rebus, Pro ſolo vero dominio, non ſolet fieri homagiū excepto domino principi, lib. 2. c. fiunt. 60 Illa hic locus corruptus et difficilis legi debet.* Concerning the expoſition of the quhilk it is to wit, that all homage is maid to the over-lord and maiſter, quhairof ſum are maiſt chaiſe, and principall, ſik as the King, to quhome without onie exception *ſuprema fides, quæ nullam recipit exceptionem patitur iure optimo debetur*: vther overlords ar inferiour and ſubalterne, to quhom their vaſſalles are bund and oblisſhed, and ſuld make their homage. And ſwa their is twa kindes of Homage, *aut enim eſt ligium, aut non ligium. vid. Ligeantia.* Baith the ane and the vther may be maid *pro terris, tenementis, annuis redditibus*: Becauſe ane free halder of landes, tenements, and annuell rentes, maie make homage to his immediat ſuperiour for his landes or tenementes, exceptand the King and his elder over lord, quhilk is *Homagium non ligium lib. 2. c. ſieri. & t. leg. fereſt. c. quando. 60.* Or he may make homage to his over lord *ſimpliciter*, without exceptiō of ony perſō or vther over-lord, quhilk is *homagium ligium. Pro ſolo dominio*, na homage can be maid, bot onelie *domino Principi*, quhilk is, *Homagium ligium*: Becauſe it is vpon condition, and covenant that he to quhome it is maid, ſalbe maiſter, Lorde and maintener allanerlie to the maker thereof. And hee quha makis

Forme of fidelitie.

Forme of Homage.

For quhat thinges homage ſuld be maid.

Homagium ligium & non ligium.

makis the samin, sall acknawledge him & nane vther, to be his Lord and maister for his maintenance, protectiō & defence, quhairanēt he makis exception of na person, & swa this kinde of homage, is maid to the King allanerlie, *pro solo ipsius dominio, quem solum & nullum alium omnes debent agnoscere pro solo domino. Hic locus admodū difficilis me diu, multūque sorsit, neq; aliter me hinc extricare possū, sed in hac re sunm vnicuiq; liberum esto iudicium.*

HVESIVM, *Hoyesium*, ane French word. *Oyez*, in latine *audite*, ane hoyes, or crie vsed in proclamatiories, quhairby ane officiar of armes, or messenger dois conveen the people; & forwarns thē to hear him, *de maritag. c. sciendum. 17. de iudic. c. 57.* It is called alswa, an out-hoy, or crie. *leg. foreſt. c. si quis 91.* And ane theife suld be taken with the blast of ane horne with clamour, or hues, and presented to the Kingis Baillie. And gif there after he flies away, he maie be slaine leisumly, and hanged vp in the next gallous. *lib. 4. c. si quis latronem. 35.* Quhilk in ane pairte is conforme to the Acte of Parliament Ia. 6. p. 1. c. 21. And in the lawes of England *ann. 4. Edward. 1.* the quha followis not the hue, raised for apprehending of malefactoures, salbe accused therefore.

HVSBANDLAND, conteinis commonlie 6. aikers of sok & syith land: That is of sik land as may be tilled with ane pleuch, or may be mawed with ane syith. For as sum auld writers testifies, the Earle of *March* for the time, caused his servand *Simon*, or *Sim Salmound*, to divid the hail land in the *Mers* into husband landes. Ilk husband land conteining 6. aikeris, quhair pleuch and syith may gang. Quha Earle of *March* this was I am nocht certaine, bot I find that ane called *Simon Salmound* is forefalted with *Alexander* Duke of *Albanie*, Earle of *March*, *Mar*, & *Garrioch*, Lord of *Annanddale*, & of *Man*, brother to King *Iames* the thrid 3. Iulij. 1483. Bot the Lords of Counceli estemis the zeirlie mailes, fermes, and dewties of ane husband land, to fiue markes, *in Registro. 1. Decemb. 1545.* And ane vther husband land ly and beside *Dumbar*, they esteeme it to 14 bolles bear, & 3. bolles quhen, *in Registro. 14. Feb. 1544.* And ane vther husband land to 3. pounde. Swa I finde na certaine rule prescrived anent the quantitie and valour of ane husband land.

Forefaltour of Alexander Earl of Murry. &c.

I

IN FANGTHEFE, *lib. 1. c. 3.* ane Dutch word, quhairof I find divers interpretationes, for in the auld lawes of the *Brittones* maid be King *Edward*, Infangthiefe is an liberty or power perteining to him quhais infeft therwith, to cognosce vpon theift, committed be his awin man, taken within his awin dominiō, & lands, likeas in sindry auld buikis, contenād the lawis of this realm. Infangthefe *dicitur latro captus de hominibus suis proprijs, saisitus de latrocinio*: & outfangthiefe is an forathefe quha cums fra anvther mans land, or jurisdictiō, & is taken & apprehēded within the lands pertenād to him quha is infeft with the like liberty. In sindry vther buiks it is writ ten, that infangthiefe is an liberty to sit & decid vpon theft, committed within the jurisdictiō of him, quha is infeft therwith, be his awin

man

man, or ony vther man quhatſumever, taken therewith, within his awin iuriſdictiõ. And Out-fang-thiefe, is power or libertie to reduce, replege, and bring-hame to his awin court, all thieues being his awin men, and committand thieft within his awin boundes, quha ar fugitiue and taken within ane vther mannis iuriſdiction, with the fange, that is, hand haveand, and back-bearand. *Lib. 4. c. Siquis 11. Quoniam attach. c. nullus 22.* Quhilk fang in the civil law, is called *furtũ manifeſtum*. Bot ſindry vthers ar in the contrair opinion, affirmand that it is not leaſũ to ony man hauand libertie of out-fang-thief, to repledge or reduce his awin man, taken without his awin libertie for thieft, to his awin court, & there to do juſtice vpon him; Becauſe al thieues ſuld vnderly the law, and be judged be him, within quhais iuriſdiction the thieft is committed: in ſik forme & maner, as is ſtatute anent ſlauchter, & punition thereof. Ia. 1. p. 2. c. 89. Amangſt the interpretoures of the civil law, I find the like controverſie in this mater. *For. Bart. in l. Si dom. 48. Nu. 2. ff. d. furtis. Quocũq; (inquit) in loco reperitur fur cũ re furtiva, ibi poteſt puniri. Veluti furtũ faciens Florentiæ, Si reperitur in alia iuriſdictione, veluti Mediolani, tum furto, poteſt à Mediolanenſibus puniri.* Quhais opinion ſindry Doctours followis, as writs *Cheſſaneus In conſuetud. Burgund. Rubr. 1. Verb. ſimple larrecin. Nu. 15.* Albeit ſindrie vthers ar in the contrair opinion, alleagand, that the thiefe ſuld be puniſhed in the place quhair he committis the thieft, *vt in additione ad Bartol. in d. l. 48.* Conforme to the quhilk, it is ſtatute be the Law of this realme, that ane thiefe of ſtollen woodde, taken with the fang in ane vther Lords lands, ſuld be arreiſted with the wood, & ſall ſuffer the law in his court, fra quhom the woodde was ſtollen. Ia. 1. p. 2. c. 34. Mair-over, ane thiefe is ordaned to be puniſhed in the place quhair the thieft was committed, becauſe the crime may be beſt tryed there. *Stat. 2. Rob. Br. c. 4.*

Furtum manifeſtum.

INFENSARE *curiam*. That is, quhen the judge informis the ſuters in ſik things quhairof they ar ignorant. *Quoni. attach. c. vbi ab aliqua. 10.* Like as the civil law. *Index poteſt ſupplere ea quæ advocatis in iure deſunt.*

ITER, From *Itinerare. h. t. Iter facere:* As *Iter camerarij*, the Chalmerlane aire, quhairof ane gud forme is written and extant in the buiks, conteinand the auld lawes of this realme. *Iter iuſtitiarij*, the juſtice aire, *quia Iuſtitiarius debet itinerare per regnum*, as it is written in the Engliſh lawes: For he ſuld make courſe throw the realme, for miniſtration of juſtice, and ride in competent and eaſie number, to eſchew grievance, and hurting of the people. Ia. 2. p. 6. c. 21.

The forme of the juſtice aire, or courte,

The juſtice aire ſuld be halden twiſe in the zeir. For King *David* ſtatute & ordaned, that the juſtice & his deputes, ſuld hald twa head courts zeirlie. *Aſſ. Reg. Da. cap. ſtatuit dominus. 18, Quoniam attach. c. ſtatuit 77.* And the Kingis juſtice, the Lordes of the regalities, and alſo the Kingis Baillies in his regalles, ſuld hald their juſtice aires twiſe in the zeir. Iam. 2. parlia. 3. cap. 5. Vniverſallie in all partes of this Realme, anis on the graſſe, and anis on the cornes. Iam. 2. par. 13. cap. 94, Iam. 4. par. 3. c. 29. And over all the Schires of the Realme, in the Moneths of Aprill, and

Iuſtice aire ſuld be halden twiſe in the zeir.

October. Ia.6.p.11.c.81. Baith in the in-land, and alswa in the Iles, South and North. Iam.4.par.6.ca.59. Becauſe the Iles and inhabitants thereof, ſuld be ruled be the Lawes of this realme. Ia.4.p.6.c.79.

For what cauſes juſtice courts ſuld be halden.

Juſtice aires ſuld be halden, for increaſe of juſtice and tranquillitie of the realme, for ſtanching of combers, ſlauchters, rieſes, thiefres, extórſiones, and oppreſſion of the Kingis lieges. And to the effect juſtice may be vniverſallie, throw the haill realme miniſtred, for punition of the ſaid crimes, ſik authoritie ſuld paſſe with the juſtice, throw all the realme, to the juſtice aires, that trespaſſoures, ſikas men-ſlayers, rievers, thieues, and committers of vther enormities, in diſſobeying, and lichelying of the Kingis lawes, may be puniſhed without favours. Iam.4.par.3.c.29. Iam.1.par.13.cap.90.

Dittay, & for quhat crimes it may be taken vp.

The juſtice aire, or court being proclaimed at the Kingis command, to be halden ſik ane day as he pleaſis, in the head burgh of the Schire: The juſtice ſuld cauſe dittay to be taken vp be his clerkes diligentlie and faithfullie. For the dittay is the principall and chiefe ſubſtantiall poynt of the juſtice aire, and the juſtice ſuld follow the ordour thereof.

Dittay may be taken vp, vpon all crimes perteining to the juſtice, and his juriſdictiones as is manifeſt be the acts of Parliament. Read the worde Dittay in the Table of the ſaidis actes, and als vpon the crime of leſe-majeſtie, or treaſon: As the death of the King, ſedition within the Realme, betraying of the Kingis hoiſt or armie, Breaking of the Kingis protection, fraudfull hiding and conceiling of ane huird or treaſure, wilful fire, robbery, raviſhing of weemē, murther, ſlauchter, thieft, foreſtalling, all kinde of falſed in doing of juſtice, in money, aſſiſe weichtes, meaſures, writs. And generallie, al vther like crimes, quhilk be the law, ar puniſhed be death, or cutting of ane member. *Lib.1.cap.2. Leg. Malcolm. Mah.cap.3. Aſſ.Reg. Dav.c.nullus 17. de Indic.c. Placitorum.*

Main-over, the juſtice generall, may ſet particular juſtice Courtes vpon ony maner of crimes, quhen needeis, for puniſhment of particular faultes that occurris, ſikas recent ſlauchter, mutilation, raviſhing of weemen. Quhilk hainous and capitall crimes, may be firſt criminally perſewed before him. And as for depredationes, ejectiones, ſpuilzies, the ſamin being firſt civilie diſcuſſed before the civill judge ordinar; Thereafter may be criminallie perſewed before the juſtice and his deputes, at particular dictes, ſet and appoynted therefore, or be way of dittay in the juſtice aire. Ia.5.p.4.c.33.

Dittay may be taken vp twa maner of waies, privatlie, and publicklie.

Dittay may be taken vp privathe, or publicklie.

For the juſtice and his deputes may privielie take vp dittay, bee privie inquiſition of malefactoures, and their receipters, be the aith of three gud, honeſt, & faithfull men, & of the principall man, ſikas the Chalmerlaine or officiar within ilk village or town. *Stat. Alex.c.12.* And mair-over, all Lords and heades-men of al partes of this realme, ſuld giue vp dittay vpon notour trespaſſoures, without exception of ony perſone, to bee taken and juſtified without remiſſion. I.3.p.13.c.94. And ſulde mak trew

relation

relation there-anent to the Chancellar or juſtice, quhen they ſalbe required. Ia. 3. p. 14. c. 98. And gif they be convict be ane aſſiſe in the contrair, they ſall perpetuallie tine their court, in all time cũming. *Li. 4. c. Aſſ. 20. ſtat. Wilh. c. Aſſ. 5.* Secõdlie, the juſtice ſuld direct publicklie the brieue of dittay to the Schireffe and his deputes, for taking vp of dittay, quhair of the tenour followis.

The brieue of Dittay

Wilhelmus &c. Iuſtitiarius Domini noſtri regis generaliter conſtitutus, Vicecomiti & Ballinis ſuis de. E. ſalutem. Quia indictamenta Regia, Deo duce, decimo die menſis. N. proximè futuri, cum continuatione dierum, apud. F. Infra vicecomitetum veſtrum levarè intendimus, vobis præcipimus & mandamus, quatenus ſummoneatis, ſeu ſummoneri faciatis, legitimè coram teſtibus legalibus, de de qualibet baronia, duodecim vel quindecim homines, ad hoc opus magis ſufficientes. Et de qualibet tenendria, ſeu villa quatuor vel ſex homines. Et de quolibet burgo, duodecim, vel ſexdecim burgenſes, ad hoc opus magis ſufficientes, ſecundum quantitatem locorum, & numerum perſonarum, in ijſdem exiſten. vna cum ſeriando, fabro, molendinario, braſiatore, & ſectatore, cuiuſque baroniæ, villæ ſeu tenendriæ. Quod compareant coram clericis noſtris, pluribus aut vno, dictis die & loco, cum continuatione dierum, ad ſurſum reddendum indictamenta regia. Et faciendum ac ſubeundum, id quod in hac parte, iuris ordo requirit. Et ſitis vos vicecomes, & ballini veſtri, ibidem, coram clericis noſtris, dictis die & loco, cum continuatione dierum. Haben. vobiſcum ſummonitionis veſtræ teſtimonium, & hoc breve. Prouideatis etiam pro expenſis dictorum clericorum, quas vobis in primis computis, de exitibus iuſtitiariæ reddendis, faciemus plenius allocari. Et hoc nullatenus omittatis ſub omni pœna, quæ competere poterit in hac parte. Datum ſub ſigillo officij noſtri iuſtitiariæ. Quhilk brieue, the Schireffe ſuld reporte at the day appoynted, in the place, quhair the dittay ſulde be taken vp, to the juſtice Clerke, and twa witnes at the leaſt with him; for to verifie the execution of the brieve, to be lauchfullie done, cõform to the cõmand of the juſtice. Cõforme to the precept & cõmand abone written; the juſtice Clerke ane, or maa, conveenis the day, and in the place appoynted, and there remainis ſuſteined vpon the Schireffis expenſes (quhilk is allowed to him in his comptes, of the iſſues & profites of the juſtice aire) and takis vp dittay be the relation, and depoſition of the perſons ſũmoned, for the giving vp thereof. Quhilk dittay they ſuld keip quiet, and ſuld na-waies reveale the ſamin to ony perſon, nor tranſlate it vtherwaies then it was given to them, nor change names, ane for ane vther: Nor put out ony furth of the rolles; bot lauchfullie and trewlie ſuld report and deliuer the ſamin to the juſtice, and his deputes. Ia. 2. par. 6. cap. 28. Dittay ſuld be given vp bee vertue of the Kingis commiſſion; direct to Earles, Lordes, Barronnes, Knightes, and ſpeciall Landed Gentle-men: And be foure of the Councell of everie Burgh, quha ſall mak & giue vp dittay, be their awin knawledge, or be ane ſworne inqueſt, or ſworne particular men: Vpon all perſones ſuſpect culpable of the crimes and faultes, perteining to the juriſdiction of the

juſtice and his deputes. Iam.6.parlia.11.cap.81. Quhilk ſuld be likewiſe keiped quiet, and reported, as ſaid is, to the juſtice. And dittay being taken vp, vpon ony crime againſt ony perſones: Neither judge, bot the juſtice and his deputes, may mell there-with. Like as the Wardaine on the Bordoures, in his wardaine courte, may nocht intromet with ony thing that perteinis to the dittay of the juſtice aire. Iam.2.par. 11.cap.42.

The portueus

The dittay taken vp, in maner foreſaid; The juſtice Clerke, at command of the juſtice, makis ane catalogue, conteinand the names of the perſones indited: And vpon quhom dittay is given vp, quhilk is called ane portuous. Togidder with ane vther Catalogue, quhilk conteinis the particular dittay, given and taken vp, vpon tranſgreſſoures and malefactours, called the *traiſtes:* Baith the ane, and the vther, is delivered be the juſtice Clerke, to the crowner: To the effect, that all the perſones quhais names ar conteined in it, may be attached, and arreiſted be him to compeir in the juſtice aire, to anſwere to ſik crimes as ſalbe im-put vnto them. Ia.1.p.13.c.139. Ia.3.p.14.c.99.

Traiſtes

Attachementes, arreiſtmẽt, & formether of.

The crowner, in making his arreiſtments, ſuld paſſe to the habitation and dwelling place of the perſones, given to him in portuous, and thereafter make proclamation at their Paroch Kirkes, vpon feſtuall daies, and take ſovertie of them, ſick as he will ſtand for to the King. And gif the perſones ſwa arreiſted, be nocht ſtreinzieable; The Crowner ſall arreiſt their gudes, and put them in ſure keiping, to the Kingis vſe: quhill the ſaid ſovertie be founde: Or elſe take their perſones, and put them in the Kingis Caſtell, gif ony bee within the Schire. And gif there be na Caſtell, hee ſulde deliver them to the Schireffe to bee keiped. Ia.5.p.3.c.5.

Arreiſting of fugitiues.

And mair-over, becauſe ſindrie perſones indited, vſis to flie and abſent them ſelues; ſwa that the Crowner cannocht apprehend them perſonallie, to arreiſt them. In that caſe, it is ſufficient that the Crowner cum to the dwelling place of the ſaidis perſones, and make them warning, and charge to compeare in the juſtice aire nixt following, to anſwere to ſik accuſationes of crimes, as ſalbe im-put vnto them. And thereafter vpon the nixt Sabboth daye following the ſaid charge, the Crowner ſal make open and publick intimation of his warning, charge, and premonition, maid to the ſaidis perſones, be their names, in their Paroch Kirkes. Quhilk charges, premonitiones, and intimationes, ſall ſtand to them for ſufficient arreiſtmentes, the ſamin being lauchfullie proven, as effeiris of the Law. Iam.5.p.4.c.33.

And mair-over, gif he cannnocht attache ony man perſonallie, be reaſon of his abſence; he ſuld arreiſt all his gudes moveable, and vnmoveable, to remaine vnder ſure pledges, and to be furth cummand to he King: In-caſe he be nocht anſwerable to the law, before the juſtice *Leg. Malc. Mak. cap. 1.*

The

The Crowner ſall arreiſt at all times, alſweil before the crye of the aire, as after the ſamin, all them quha ar given to him in portuous, be the juſtice Clerke, and nane vthers. Iames. 1. Parliament. 13. cap. 139. Bot all arreiſtmentes, ſulde bee maid before the time of the beginning of the juſtice aire, and ſeate of juſtice, & na waies after the ſamin. Ia. 3. par. 7. ca. 58. All perſones charged to compeir, in the juſtice aire, ſuld be attached and ſummoned be the auld law of this Realme, vpon the ſpace of fourtie daies at the leaſt. *aſſ. Reg. Da. c. ad Summonitiones.* 19. And albeit na man ſuld be attached or arreiſted, except dittay be given vp vpon him. *Stat. Alex.* c. 2. Nevertheleſſe, in attachementes, or arreiſtments of ony perſon indited, na mention ſuld bee maid of the cauſe or crime, for the quhilk he ſuld be indited; bot the ſame ſuld be concealed be the clerke and na waies revealed be him. *Stat. Wilh. c. ſtatuit etiam 6. leg. Foreſt. c. Si aliquis 52. quoniam attach. c. Si aliquis 49. Aſſ. reg. Da. c. 6.*

All the indwellers within the towne or village, ſuld concurre and aſſiſt the crowner, in attachement or arreiſting ony malefactour to compeir in the juſtice aire, to vnderly the law. *Stat. Alex. c. 2.* And ſik-like, quhen the crowner receivis his portuous, conteinand the name of ony perſon indited, quha wil not obey him, or quhom he dare nor, nor is not of power to arreiſt; he ſall paſſe to the Lord of the Barronnie, quhairin that perſon dwellis: Vtherwaies gif he dwellis not within ane barronie, he ſall paſſe to the Schireffe of the Schire, & require them to be borgh and ſovertie, to enter the ſaid perſon to the juſtice aire; quhilk gif the barrone or Schireffe refuſis; the Crowner ſal require them to ſend their officiares, and ſufficient number with them, to fortifie and ſupplie him, in making of his arreiſtment, taking and keiping of the ſaid diſobedient perſon, quhill he be brocht to the Schireffe, to be keiped be him, vntill the time of the Iuſtice aire. Iam. 3. p. 14. c. 99. Mair-over, the crowner ſall bring all perſones arreiſted be him, quha hes not, or may not finde borrowes to the Schireffe of the Schire, quha ſall receiue him in ſuertie, and firmance, vpon the Kingis expenſes; and quhair it failzies, on their awin gudes, quhill the nixt juſtice aire, and there preſent them to the juſtice. Ia. 3. p. 14. c. 102.

Arreiſting of diſſobedient perſones.

The Crowner, or makers of the attachements and arreiſtments, ſuld not intromet, or carie awaie ony gudes or geare, perteining to the perſones attached: Bot the Lord, or officiar of the towne, ſall ſuſteine them reaſonablie, vpon the expenſes of the ſaide perſon, be the ſpace of ane day, and ane nicht. *Stat. Alex. c. 2.* And gif the ſaid perſon cannot bee perſonally apprehended: The crowner may remaine in his dwelling-houſe ane day and ane nicht, and ſuld be ſuſteined with twa ſeruandes, and vther twa as witneſſes, and his clerke ſuld haue twa ſchillings, and ſa may nocht take any mair of the gudes and geare, perteining to the ſaid perſon attached, albeit he be abſent. *leg. Malc. Mak. c. 1.*

The crowners expenſes

Attachements & arreſtments maid be Crowners and ſerjandes, may be provin be them and witnes. *Ia. 3. p. 7. c. 52.* That is, be the aith of the

Probation of arreiſtmentes

Crowner, & ane witnes cõforme to the auld conſuetude. I. 5. p. 4. cap. 33.

The crowner ſall haue for his fee, for ilk man amerciat or componand, ane colpindach, or threttie pennies. For him that is clenged be ane aſſiſe, the crowner ſall haue na thing. For ane man filed or condemned, the crowner ſall haue all the dantoned horſe not ſchod. *Leg. Mal. Mac. c. 1.* Quhilk is to be vnderſtand, of dantoned Horſe, depute to wark, and not to the ſadle; that was ne ver ſchod, nor vſed to ſchoone. I. 3. p. 14. cap. 113. The crowner ſuld haue all the cornes lyand in binges & mowes, caſten and broken, al the in-ſight, vtenſile, and domicile, within the inner part of the houſe: That is, within the cruik hingand vpon the fire. And all and ſindrie ſcheip within twentie: And all the ſwine and Gaites with in ten. *Leg. Mal. Mak. c. 1.* Attachements and arreiſtmentes being maid, or directed to be maid; or in the time of the making thereof: The juſtice generall, directis ane charge, called *præceptum itineris Iuſtitiariæ*, to the Schireffe and his deputes, in maner and forme following. *Wilhelmus Iuſtitiarius domini regis generaliter conſtitutus, Vicecomiti & Ballivis ſuis de E. ſalutem. Quia ordinamus iter iuſtitiariæ domini noſtri regis, Deo duce, tenen. de tota ballia veſtra, apud E. Decimo die menſis N. proximè futuri, cum continuatione dierum. Vobis præcipimus & mandamus, quatenus ſummoneatis ſeu ſummoneri faciatis, legitimè & coram teſtibus legalibus, omnes Epiſcopos, Abbates, Priores, Comites, Barones, & ceteros liberè-tenentes, totius ballia veſtræ qui ſectas debent. Ac etiam omnes illos, qui nihil niſi ſuas debent præſentias, qui de domino noſtro regetenent in capite. Quod compareant coram nobis ſeu deputatis noſtris, pluribus aut vno, dictis die & loco, cum continuatione dierum, ad perficiendum. ſubeundum, & determinandum, id quod in hac parte, iuris ordo poſtulat. Præmoneatis etiam, omnes indictatos, tam de novo, quam de veteri, & ſuos plegios, qui nondum coram nobis comparuerunt, & iudicium ſubierunt, ac etiam illos, qui proſequi habent, vel defendere in dicto itinere, ſecundum formam iuris. Quod compareant coram nobis, ſeu deputatis noſtris, pluribus, aut vno, dictis die & loco, cum dicta continuatione dierum, ad perficiendum & ſubeundum, id quod in hac parte iuris ordo requirit. Et ſitis vos Vicecomes, & Ballivi veſtri, ibidem, dictis die et loco, cum dicta continuatione dierum, haben. vobiſcum ſummonitionis, ac præmonitionis veſtræ teſtimonium. & hoc breue. Prouideatis in-ſuper pro expenſis noſtris, benè & competenter. Quas vobis, in veſtris primis computis, de exitibus Iuſtitiariæ reddendis, vobis faciemus pleniùs allocari. Et hoc nullatenus omittatis, ſub omni pœna, quæ competit in hac parte. Datum ſub ſigillo noſtri officij Iuſtitiariæ.*

The crowners fee.

Of perſons quha ſuld compeir in the juſtice aire.

Præceptum itineris Iuſtitiariæ

Quhilk precept & command, is conforme to the Lawes of this realme: Becauſe all free-halders, haldand lands in chiefe of the King, within the Schireffdome, quhair the juſtice aire is halden, ſuld compeir & be preſẽt all excuſe ſet aſide, except the ſame be of ſeiknes, the kings ſervice, or tinſell of landes and heritage; To certifie and informe the juſtice and his deputes, in ſik queſtion and doubtes, quhilk incidentlie ariſis, as emergent, and of before could nocht be fore-ſeene, nor knawen. *Aſſ. reg. Da, c. ſtat. 18. quoniam attach. c. ſtat. 77.* Sik as Biſchops, Abbots, Priors,

Aſſeſſours and counſellers

ors, Erls, barones, & vther free tennents, being ſummoned & warned to that effect, *quoniam attach. c. ad ſummonitiones 78. l. 4. c. Stat. 19*: & they being lauchfullie warned and not compeirand, incurris, the paine of the vnlaw of the court. *Li. 4. c ſtatutum. c. 19.* And may be puniſhed as favourers of the tranſgreſſours, and airt & pairt with them. *Ia. 4. p. 3. c. 29.* And they and all vther the Kingis lieges, ſuld cum to the juſtice aire, and to all vther courtes, in ſober and quiet maner; and ſuld not bring with them, maa perſones, then ar dailie in their houſhald and families. And being cum to their Innes and ludgeing, ſuld laye their armour and weapones from them, and vſe na weapons, bot their knife. Ia. 2. p. 12. c. 83. Mairover, all Lordes, Spirituall and Temporall, Barronnes and vtheris, cummand to the juſtice aire, ſuld na-waies mainteine, fortifie, ſupplie, defend, nor be Advocattes, nor ſtand at the Bar, with manifeſt traitoures, men-ſlayers, thieues, rievers, nor vther treſpaſſoures, nor perſones perteining to themſelues, or vtheris: Saifand, it ſalbe leaſum to them in ſober waies, to ſtande with their kin, and friendes, in defenſe of them, in their honeſt actiones. Ia, 3. p. 14. c. 98. Quhen the juſtice aire is to bee halden vpon the Bordoures; The Wardaines, within their Wardainries, and their deputes, with the free-halders of the Schireffedome, being warned thereto be the Schireffe, be open proclamation, ſuld convoy the juſtice and his deputes, to the place appoynted for halding of the Court: And accompanie them, in-during their reſidence, and vntil they be out of the boundes of their Schireffedome, and received be the nixt Schireffe. Ia. 6. p. 11. c. 81.

In the juſtice aire, ſuld compeir all perſones attached, and arreiſted, conforme to the dittay given and taken vp vpon them; quhairof, ſome were arreiſted of before, to haue compeired in the juſtice Courte preceeding, alreadie ended, and expired, and compeired nocht in the ſamin: quhais names ar given to the Crowner, to be of new attached, and arreiſted, to the aire following, as of before: Vthers ar of newe indited, vpon quhom nae poynt of dittay was taken vp, in ony time bygane, quhais names ar comprehended in ane Catalogue, called portuous. All the foreſaidis perſones indited, baith of auld and of new, ſuld be attached and arreiſted be the Crowner, to compeir and vnderly the law, the time of the juſtice aire, as is manifeſt be the precept foreſaide, direct be the juſtice generall, to the Schireffe. Perſones attached.

All perſons arreiſted, that may be apprehended, the time of the aire, in the Tolbuith, or in the town, quhair the iuſtice is, ſalbe taken and delivered to the juſtice, to be juſtified for their crimes and treſpaſſes. Swa that the arreiſtment be maid before the time of the beginning of the juſtice aire, and ſeate of Iuſtice. Iam. 3. par. 7. cap. 57. And quhair landes lyand in ſindrie Schireffdomes, ar annexed & vnited in ane Barronnie: The inhabitantes thereof, ſall anſwere in the juſtice Court, quhair the landes lyis, and the Lorde, or proprietar of the landes annexed, givis preſence or ſervice, in the court of the Schireffedome, within the quhilk Inhabitãs of annexed landes.

the barronnie lyis, to the quhilk the landes ar annexed. Ia.4. par.6.c.93. For in this caſe, reſpect and conſidderation is had to the naturall ſituation of the landes, and to the juriſdiction, within the quhilk they lye: rather nor to the imaginar, and civill forme of lying, of the landes be annexation.

ſtewardries & Bailleries

Attour, all inhabitantes of ſtewardries and baillieries, ſall cum to the head burgh of the Schireffedomes, quhairin they lye: And within the quhilk head burgh, the Kings juſtice aires ar halden. I.6.p.11.c.81.

The judge

The judge in the Kingis juſtice aire, is the Kingis juſtice generall, or the Kingis baillie, in his regalles, havand lauchfull power and commiſſion granted to them. Ia.2.p.3.c.9. For the King, or the juſtice generall, may make aucht deputes; quha with ane depute of the Theſaurar, and ane vther of the juſtice Clerke, ſuld paſſe ſeverallie throw the aucht quarters of the realme, and hald juſtice Courtes. I.6.p.11.c.81.

The juſtices expenſes.

The juſtice generall, ſuld haue for his ſuſtentation, ilk day of the aire, fiue pound. Like as the juſtice Clerke ſuld receive for ilk man clenged, be ane aſſiſe, and drawen furth of the rolles, foure pennies. And for ilk man amerciat, or cõponand, ij.s. *Leg.Mal.Mak.c.2.* For ilk Actorney & commiſſion; twa ſhillinges. For ilk man quha producis ane remiſſion, twa ſhillinges. For ilk man that cummis in the juſtice wil, twa ſhillinges. For ilk man convict and filed, twa ſhillinges. For ilk letter of witneſſe, ſex ſhillinges, aucht pennies.

The Schireffe.

The Schireffe ſuld be preſent, as he quha is warned be the juſtice precept, to anſwere to all the poyntes thereof: And toutching the execution of his office, togidder with the Crowner, quha ſuld anſwere for his attachementes and arreiſtmentes, & verification thereof: And the Schireffe, with the Crowner, ſuld thoill ane aſſiſe, the laſt day of the aire, anent the vſing and execution of their offices, to quhome juſtice ſuld be miniſtrat, as they ſall be founde innocent, or culpable. Iam.3.parlia.14.cap.103.

The crowner.

The forme of the courte.

The day of compeirance being cum, to the quhilk the juſtice aire is cryed and proclaimed; The juſtice and his deputes, ſuld compeir with all vther perſones, charged and commanded to concurre and aſſiſt with them. At the quhilk time, the ſutes ſuld be firſt called, with their Lordes. For albeit the Suitures compeir, nevertheleſſe, their Lords and maiſters ar obliſhed likewiſe to compeir, and giue preſence to the juſtice in his aire: They being lauchfullie ſummoned, & charged to that effect, be open proclamation, and be the juſtice precept abone written.

The ſute of court

Commiſſion

2 The Commiſſion and power given to the juſtice, ſuld be produced and red: And gif the Commiſſion be given and granted to maa perſones nor ane conjunctlie: They ſuld be all preſente; vtherwaies it is na lauchfull courte. Bot gif they be conſtitute conjunctlie and ſeverallie: It is ſufficient that ony ane of them be preſent. And mair-over, the juſtice may nocht make and conſtitute deputes or ſubſtitutes vnder him, except he haue ſpeciall power in his commiſſion, to do the ſamin.

Lib.

lib.4.c.ſi vnus.27. Thirdly the judge ſuld begin and fenſe the court, conforme to the common ordour and conſuetude vſed and obſerved. Ia.6. par. 11.c.81. Quhilk ſuld be done at elleven houres before noone. Ia.6. p.11.c.86. Fourthlie, the court beand affirmed, the dempſter ſuld be called and cauſed to be ſworne, that he ſall leallelie and trewlie, vſe and exerce his office. Fiftlie, the ſuites ſuld be called. I.6.p.11.c.81. zit againe as of before ilk man, twiſe with their lords & maſters, & the abſents decerned to haue failzied, & therefore ſuld be vnlawed, & gif baith the ſuiter and his Maiſter be abſent, ilk ane of them be thẽſelues ſuld be amerciat. The fenſing of court. The dempſter. The ſutes.

Sextlie, the aſſiſouris being ſummoned be ane precept direct be the juſtice to that effect, ſuld be called, ilk perſone vnder the paine of fourtie punds, and the juſtice may cheiſe aſſiſe ane or maa, as he pleaſis, of the beſt and maiſt worthie of the cuntrie, before quhom the haill accuſation, reaſoning, writtes, witneſſe, and vther probation, and inſtruction quhat-ſum-ever of the crime, ſalbe reaſoned and deduced in their preſence; and alſo in the preſence of the partie accuſed, in face of judgement. Ia.6.p.11.c.90.91. And it is to wit, that he quha givis vp dittay vpon ane vther, ſuld not paſſe vpon his aſſiſe. Ia.1.p.3.c.50. The aſſiſe.

7 The juſtice ſuld proceede in his court, and put the offenders, gif ony be alreadie in priſon, to the knawledge of ane aſſiſe; and miniſter juſtice vpon them, as they ſalbe founde innocent, or culpable. Iam.6. p.11.cap.81. The perſons attached.

8 He ſall call thereafter the pledges, and cautioners of perſones attached, quha fand ſovertie before the juſtice ony time preceeding, at ony particular diet, or court, to compeir the thrid day of the aire, or ſooner, vpon fifteene daies warning. Ia.6.p.11.c.81. Pledges for entres of vthers.

9 This being done, the clerke ſall viſit and conſidder the haill rolles, and journell, and call all them quha ar abſent from the aires preceeding. Vpon quhais heades and names is written, *prima dies, ſecunda dies, tertia dies*: Be the quhilk, he vnderſtandis, fra quhat aire or court they were abſent. And that they may be therefore amerciat, ilk ane of them bee them ſelfe, be reaſon of their abſence. And gif the ſaidis perſones, nocht compeirand of before, now compeiris and ar preſent: The clerke ſall luik the auld dittaies and rolles, and accuſe them, conforme thereto, in the beſt maner he may gudlie. And gif there be na particular poynt of dittay, or accuſation; he ſall lay commoun dittay to their charge.

10 Thereafter the juſtice ſall call the perſones newlie in-dited and arreiſted; And gif they or ony vther of the arreiſted perſones foreſaidis, compeir; they ſuld be preſented to the court, and to the Schireffe, quha ſuld anſwere for them, vntill juſtice be done vpon them.

11 They quha ar attached, and compeiris not, may na-waies be accuſed for their nocht compeirance, bot be the Kingis ſervice; quhom ſuld be verified be the Kingis letter, produced in court: Or be reaſon of ſeiknesſe: Quhilk be the auld law, was tryed be ane aſſiſe, quhidder it was

Ex[illegible] of compearance.

trew

trew, or feinzied: Albeit the partie was abſent. *Stat. 2. Rob. Br. c. 5.* Bot now it ſuld be proven and verified be the Miniſter of the Paroch, within the quhilk the perſon excuſed dwellis: And be twa witnes perſonallie compeirand in judgement. I. 1. p, 9. c. 114. And concerning perſones abſent, it is generallie ordained, that everie barrone and free-halder, ſal anſwere in the juſtice aire, for his awin men, dwelland vpon his awin proper landes, tackes, ſteadinges, rowmes, and baronies, and ſalbe halden to enter them, or els anſwere to the King, for their vnlawes. I. 5. p. 3. c. 6. Quhat is the vnlaw in the juſtice aire. *vid. Amerciamentium.* Bot for the better vnderſtanding of the lawes, concerning fugitiues and abſentes: It is to wit, that be the auld lawes of this realme, gif the partie defender being lauchfullie warned, compeired not, bot ſend ane eſſoinzie, or excuſe; the ſamin being reaſonable, was receiued and admitted to the judge, three ſindrie daies or courtes: And gif he compeired afterwarde, and verified not his eſſoinzies to be lauchfull, he was diſtreinzied, & poynded therefore. Bot gif he neither came, nor ſend ane excuſe: The partie perſewer compeared at lauchful day and time of court, and offered him reddie to perſew, quhilk he did be the ſpace of three daies. And the thrid courte beand by-paſt, the defender was ſummoned to compeir the fourth day: The quhilk fourth court was peremptour; becauſe *ſentence definitiue* was given againſt him, conforme to the claime and petition, gif he compeir nocht, *Lib. 1. c. ſummonitus. 9.* The like forme and ordour of proceſſe was obſerved in juſtice courtes. For mention is maid of the firſt aire. Ia. 3. p. 13. c. 94. And of the ſecond aire. I. 5. p. 4. c. 32. And of the fourth court. I. 3 p. 14. c, 101. And gif ony perſon indited, and lauchfullie attached, compeired not, the ſaid three courts, his pledge or law borgh was called and amerciat for the firſt, ſecond, and thrid court, and at ilk time after ilk ane of the ſaidis courtes, the ſaid pledge was poynded and diſtreinzied, and the diſtreſſe or poynd was letten to borgh, and maid free vnder caution; that the ſaide perſon indicted, ſuld compeir in the nixt aire following, to vnderly the law. And gif he was abſent at the fourth court, the peremptour doome was given againſt him. That ſik ane man was in ane amercia ment, and at the Kingis horne, and his landes and all his gudes eſcheit to the King, except he come within fourtie daies, and did bide the law: And thereafter the court beand ended, the ſaide perſon was denunced rebell, and put to the horne openlie at the mercat croce of the head burgh of the Schire. Quhilk forme of proceſſe, was ſa lang and prolixt, that in mony zeires, parties hurt and grieved, gat na juſtice: And treſpaſſoures and crimes paſſed vnpuniſhed: quhilk was the occaſion to mony perſones to commit crimes, truſting na haſtie punition nor correction to follow. Therefore King *Iames* the Fifth, ſtatute and ordained, that the proceſſe of juſtice aire, and juſtice courtes, ſuld be peremptour at the ſeiland anſwor court, ſwa that fugitiues not compeirand at the ſecond aire or court, ſuld be denunced the Kingis rebelles, and put to his horne,

Of perſõs abſent or fugitiue.

The fourth court.

and

and all their gudes his eſcheit. Iam. 5. Parlia. 4. Cap. 32.

12 Hereafter the Lordes of regalitie may deſire their men to be remitted to their awin juſtice Courte, and replege them, ſchawand their commiſſiones, power, and pay and therefore; and leivand ane caution behind them, called *Cidrach*, quha ſalbe acted and obliſhed, in the juſtice Court, that juſtice ſalbe done and miniſtrat, in the court of the regalitie, to the partie compleinand vpon the perſon repleged. Replegiation, be reaſon of regalitie.

13 The juſtice or his Clerkes, ſall demand and ſpeare at the Baillies of Burrowes, gif they be reddie to preſent ilk burges within their Burgh, indited to the Kingis juſtice aire: Quhilkis perſones ſuld all enter perſonallie before the juſtice, vnder the paine of ane vn-law and amerciament of court: quhais names the ſaids baillies ſall put in writ, and deliver the ſamin to the juſtice, or his clerkes. And gif they will borrow or repledge their ſaidis nichtboures, they ſall ſchaw their commiſſion, and pay therefore; And thereafter they ſall draw, or obliſh themſelues, their Commiſſion, and burgh in pledge: That thay perſones quhom they repledge, and quhais names they giue in write, ſalbe furth-cummand, and anſwerable to the laws, and challenge of the juſtice. At the quhilk time, he and his deputes ſall aſſigne to them ane certane day, to vnderlie the law, either in that aire, or thereafter quhen he ſall think ſpeedefull. And at the ſamin time, it is leaſum to the Kings juſtice, ſittand in the principall burgh of the royaltie, to giue ane aſſiſe to all the ſaidis burgeſſes, repledged of their awin nichtboures, that beſt knawis the veritie, dwelland in the ſame burgh with them. And gif there be nochtane ſufficient number of the ſaid con-burgeſſes: It ſalbe leiffull to chooſe ane aſſiſe of the burgeſſes of the ſaid head burgh, quhair the juſtice and his deputes ſittis, as he ſall think expedient. Ia. 4. p. 1. c. 1. Replegiation of burrowes.

14 Gif the partie accuſed compeirand, alleagis to his remiſſion or reſpet, he ſall produce the ſamin in court, and ſall finde ſicker borrowes to affith and content the partie compleinand, within fourtie daies following: Quhair vpon ane act is maid in court, quhairby he and his cautioner, ar obliſhed to affith and ſatisfie the partie, within the ſpace foreſaid; Quhilkis called the acte of Adjournall. And gif he refuſis to finde caution, he ſall remaine in the Kingis priſon, quhill the ſaid fourtie daies be runne, and then his remiſſion ſalbe expired, and of na value. Ia. 2. pa. 14. c. 75. And in this caſe, quhen ony man takis him to his remiſſion, reſpet, or compoſition, in the juſtice aire, or juſtice court, and findis ſovertie to affith the partie: It is leaſum to the partie to call the ſaid ſovertie before the Lordes of Councell, conforme to the act of Adjournal, maid there-anent. Ia. 5. p. 3. c. 7. As gif ony man becummis ſovertie for ane vther, anent ſpuilzie committed be him, and for reſtitution or ſatisfaction to be maid be him therefore. He as ſovertie may be called and conveened for the gudes ſpuilzied. For the violent prices thereof, for the damnage, skaith, and intereſt ſuſteined be the perſewer, throw the committing of the ſaid ſpuilzie. *10. Martij. 1590. William Keith*, contrair the Remiſſiones, or reſpeues. Act of adjournall

Earle

Earl of *Caithneſſe*. And the ſaid ſovertie being condemned, hes gud action againſt the principall partie, for his reliefe, be ane ſimple charge, vpon ſex daies warning, without peremptour ſummoundes, or ordour of table, *11. Julij. 1543.*

15 Gif the perſon attached compeiris in the Courte, and beand accuſed, hes na relevant exception, or reaſonable defenſe, of neceſſitie he ſuld paſſe to the knawledge of ane aſſiſe; conforme to the Lawes of the Realme. At the quhilk time, the haill aſſiſours ſuld be called, and the abſentis amerciat. Ia. 6, p. 11. c. 76. And the partie accuſed, ſuld be heard to propone all and ſindrie, his lauchfull defenſes, againſt the haill aſſiſoures or ony of them, to repell them, as he may beſt of the law, and ſtay them to paſſe vpon his aſſiſe. At this time the perſon compeirand and accuſed, cummis in the will of the juſtice, or he is clenged be ane aſſiſe; or he is filed and convict. Gif he ſubmittis himſelfe, and cummis in will; It is leaſum to the juſtice, to draw him furth of the rolles, and to declare his will, and to charge him to pay ane compoſition; or ſik ane ſūme of ſilver, as he pleaſis to modifie, after the qualitie of the crime and perſon, for vp-taking and in-bringing quhairof, the juſtice aire being ended, The juſtice directis his precept, called, *Præceptum extractus itineris iuſtitiariæ*, in this forme.

Perſones cummand in will.

Wilhelmus iuſtitiarius generalis, Vicecomiti & Ballivis ſuis de .E. ſalutem. Quia in itinere iuſtitiariæ Domini noſtri regis, per nos vltimò tent. apud .F. decimo die menſis, N. Anno Domini &c. Diverſi fuerunt amerciati, & pro ſuis delictis convicti, & in noſtra voluntate poſiti. Quare vobis præcipimus & mandamus, quatenus de infra ſcriptis perſonis ſubſcriptas ſummas levari faciatis, & pro eiſdem ſecundum formam iuris diſtringatis. Et primò de N. ſummam &c. De quibuſquidem ſummis ſolvatis pro expenſis noſtris in dicto itinere ſummam. N. Reſiduum verò declarum ſummarum ſolvatis cofferariis Domini Noſtri Regis. Vel cui vobis aſſignabitur infra tempus legitimum, hoc eſt infra quadraginta dies primum diem dicti itineris proximè & immediatè ſequen. Et hoc nullo modo omittatis.

The precept of extractes.

Perſones charged

Quhen ony perſon is clenged be ane aſſiſe, the juſtice directis his Teſtimoniall, called *Litera teſtimonialis de homine mundato per aſſiſam*, in maner following.

Wilhelmus iuſtitiarius generalis, vniverſis & ſingulis ad quorum notitias præſētes literæ pervenerint, ſalut. Noveritis quod comparens corā nobis in itinere iuſtitiariæ Domini noſtri regis, tent. apud .F. decimo die menſis. N. anno Domini &c. I. de .B. indictatus, & per rotulos Regios calumniatus, de arte & parte talis furti, vel talis rapinæ, vel incendij &c. Quamquidem calumniam dictus .I. in facie iudicij penitus denegavit. Et ſuper hoc ad recognitionem aſſiſæ vtique ſe ſubmiſit. Quæquidem aſſiſa hinc inde diligenter conſulta, Et plenius auiſata, dictum .I. à dictis calumniis ſibi impoſitis, quittum declaravit, penitus & immunem. Et hoc omnibus quorum intereſt, vel intereſſe poterit, notum facimus per præſentes. In cuius rei teſtimonium ſigillum officij noſtri appendi curavimus.

All

All thay perſons quha cummis in will, & ar drawen furth of the rolles, & alſo they quha ar clenged be ane aſſiſe, cannа-waies in ony time there after be called or accuſed for that crime, for the quhilk they cum in will; for anis quit & clenged, ay quit & clenged. Zit neverthelеs, gif ony perſo be accuſed criminallie of life & lim, at the inſtance of ané vther private man allanerlie, and is clenged & maid quite: the Kingis juſtice & his deputes, be reaſon of their office, may thereafter tak inquiſition anent the ſaid crime, & in the Kingis name accuſe the committer thereof, cõforme to the Law. Notwithſtanding that of before, he was clenged thereof be ane aſſiſe. *Lib. 4. c. Si querela. 58.* Becauſe the action or perſute of ane priuy partie, prejudgis not the King in his richt or entres, competent to him, be reaſon of his royal power. And therefore the Theſaurar, & the Kings Advocate, may perſew all malefactoures: Albeit the parties deliſt, or privatelie agree amangſt themſelues. Ia. 6, par. 11. ca. 76.

Quhen treſpaſſours & malefactoures ar convict, as breakers of the ſtatuts, & acts conteinand dittay; they aucht & ſuld be puniſhed according to juſtice, & conforme to the tenour & paines conteined in the acts broken & contraveened be them. Ia. 4. p. 4. c. 45. And ſa gif the paine conteined in the act be pecunial, they ſuld pay the ſamin. And gif it be capital, they ſuld vnderly & ſuffer the ſamin, except the King giue them remiſſion, and ſpeciall grace there-anent. As for example, landed men, lauchfullie and ordourlie convict of commoun thieft, recept of thieft, ſtouth, or rieſe, incurris the paine of treaſon, and therefore ſuld be puniſhed be tinſell of life, and confiſcation of landes and gudes. Ia. 6. p. 11. c. 50. Alwaies the Crowner may not intromet with ony gudes or geare perteining to ony treſpaſſour, convict & condemned to the death, at his awin hand, vntill the Schireffe or his deputes, paſſe, or ſend with him, and viſie all the haill gudes, and deliver to the Crowner ſa-meikle, as he ſuld haue be reaſon, and as perteinis to his office, and bring the remanent to our Soveraine Lord, and his Theſaurar. I. 3 par. 14. c. 102. Perſones filed and conuict

The juſtice aire beand ended, the juſtice ſall deliver the extract thereof, ſubſcrived be him to the Theſaurar, quha ſall cauſe take vp the ſumes conteined thereintill, and make compt thereof in the nixt Checker, in the quhilk compt ſalbe allowed the expenſes and charges of the juſtice, his deputes and Clerkes, as the ſamin ſalbe modified be the Lordes, Auditoures of the Checker. Ia. 6. p. 11. c. 81. The ende of the aire.

L

LAST Of gudes, how meikle it conteinis. *vid.* Serplaith.

LET Lands to borgh, *dimittere terras ad pleg. vid. plegius. vide Recog.*

LEX *Apparens lib. 4. cap. 4. de indic. c. 24. Leg. Foreſt. cap. Item in placito. 16.* Signifies the law concerning ſingular battell. And *lib. 4. cap. 1.* it ſignifies ane inquiſition, maid, or taken be ane inqueſt or aſſiſe. And in the law of *Normandie. li. 9. c. 10.* It is called *Loy apparifant.* And *lib. 8. c. 3*

All quarrelles of possessiones or moveables, quhilkis ar called *Chattel*, or of landes and immoveable gudes, suld be decided be commoun and simple quarrelles, conforme to ordour of lawe, or be lawes *Apparisantes*, quhilkis ar determinat, ather be singular battell, or be ane inquest of the cuntrie, vtherwaies called, *Loy recognoissant*. It is likewaies called, *Lex paribilis, aparium pugna, vel concertatione*, from the combat of peeres and *Campionis*, or *lex duellonum*, quhilk law is vngodlie, and not to be vsed among Christianes. *Cuia. lib. 1. de feud.*

Loy apparisant.

Lex paribilis.

LIBERATIO, Ane fee given to ane servand, or officiar, quhilk is called ane liverie. *Leg. Malcolm, Mackenneth. c. 4.* Feodum, or fee, is commonlie of silver and money, and ane liverie is of meate or cleithes. Bot this distinction or difference, is nocht perpetuall.

LIBERVM *Tenementum*, is commounlie, and properlie called, franck-tenement, or life-rent: In Italine, *vsus fructus*, conforme to the dailie practicque of this Realm. And neverthelesse, *Liberum tenementum*, signifies, the propertie, fee, or heritage. *Donatio liberi tenementi, & concessio hereditatis*, is baith ane. *Lib. 2. c. potest. 21. Tenementum Regium*, is called the Kingis heretage: *Lib. 2. c. Dicitur. 74.* In the quhilk signification, *Minor dicitur esse in tenemento lib. 3. c. Generalia. 24. c. Remanere 26. Et placitum de recto & liberis tenementis per breue domini Regis de recto debet terminari. Lib. 1. c. 6.* And King *Alexander* gaue and disponed to *Duncan Forbeys, tenementum de Forbeys*. That is, the landes and heretage of *Forbeys*: quhilk Charter is zit extant, *vid. Tenementum*.

LIGEANTIA, *Lib. 2. c. Fieri. 61.* From the Italian word *Liga*, ane league, band, or obligation: as *homo ligius*, aue man, quha is oblished & bound fra the quhilk cūmis, *Alodiū, in libris feudorum, quasi possessio sine Leode, Cuius possessor nemini est leodes siue ligius*. And *ligeantia*, is the mutuall band or obligation, betuixt the maister and the servand. *Lib. 2. c. plurib. 14. lib. 4. c. Si quis super. 26. Vid. Affidatio.* Item, the mutuall band and obligation, betuixt the King and his subjectes, quhairby wee ar called his lieges; because we ar bounde and oblished to obey & serue him. And he is called our liege King, because he suld maintene, & defend vs. And the doctours of the law writis: *Quod imperator dicitur dominus totius mundi, eodem modo quo rex regni. l. benè a Zenone, C. de quadr. præscript.* Quhilk suld be vnderstand, concerning the defense & maintenance, & not anent the propertie. *Quia reges non sunt domini priuatarum possessionum. Glos. in. L. Barbarius de Offic. prætor. Homagium ligium, vel cum ligeantia factum*, Is quhen the vassall, absolutelie makis homage to his superiour, against, all, and quhat-sum-ever persones, without exception of onie man. quhilk suld be done to na vther, bot to the King allanerlie. *Homagium non ligium, vel sine ligeantia*, is that quhilk the vassall makis to his Over-Lord, excepting and reserving the fidelitie, quhilk he aucht to the King, or his elder Over-lord, or maister. *Lib. 2. c. fieri. 61. Chessanæus. in Consuetud Burgund. Rubric. 3. §. 3. Verb. & homage. Nu. 10. cum seqq.* Quhilk vassall is called, *vassallus non homologus*. Like as the vther is *vassallus homologus*, in quhais

Alodium

Homagium ligium

Non ligium.

quhais aith na perſon is excepted. *Cuiac. lib. 2. de feud.*

M

MACHAMIVM, *Mechamium*, from the auld French worde *Mehaigne*, quhilk we cal, Manzie, hurt, mutilation, demembratiõ, or the loſſe or tinſell of ony member of ane mannis bodie: Or the breaking of ane bane; or quhen ane mannis harn-pan, or ony part thereof, is cutted away, or dung in. *Li. 4 c. 4. Res cum mahamio dicitur res minus ſana. Lib. 3. c. ex cauſa. 8.* Be the auld Law of this realme, he quha is mainzied, hes ane juſt cauſe to excuſe himſelfe fra ſingular battell, and zit he will bee compelled to purge, clenge, and defend himſelfe, *Per ignem & aquam. li. 4. c. 4. cap. Si quis pro latrocinio 15. Quoniam attach. c. Si quis 58. Lib. 4. c. aſſiſa 20. Stat. Alex. c. quicunque 31.* Quhairof the power perteinis not to ony Barronne; For na ſubject may compell ane vther to purge himſelfe be fire or water. *Stat. Alex. c. præterea 32.* This kinde of purgation was ane maiſt ſcharp and extreame kinde of purgation and triall: Like as we dailie vſe in commoun proverb; quhen we ſay be way of menacing, & boaſting, that we ſall gar ony perſon pas *per ignem & aquam*; That is, to ſuffer and vnderly that kinde of tryall that is maiſt ſevere and extreame. It is called, *iudicium Dei*, the judgment of God, as knawin to him allanerly. *Iter. Camer. c. cum hoc. 25.* And was in great vſe amangſt the *Longobardes*, as is exponed be *Hotomannus de feud, c. 44.* In the auld Saxon toung, and zit in Dutch, it is called *Ordeul, ordalium*, from, *or*, quhilk they vſe as *privativa particula*, and *Del*, quhilk ſignifies ane part or portion: quhilk word we vſe in the ſame ſignification: and ſwa *Ordeil* ſignifies innocent, quha hes na part, or is not participant of the crime, quhairof he is accuſed. Purgation be the fire, is quhen ony man with bair feete, paſſis throw the fire, without ony harme or hurte, or quhen ony man dois carry and bear in his bare hand hoat burnand iron, without ony hurt of his hand, quhilk is called *ferri candentis iudicium*. In the quhilk caſe, he was decerned to be *Ordeil*, or na-waies participant of the crime. Vtherwaies, gif his fute or hand was hurte be the fire, or hoate iron: He was condemned, as participãt & fowle of the crime. And ſiklike, *Purgatio per aquam*, is quhen ony man ſuſpect or accuſed of ane crime, was caſten in hoate or cauld water. And gif he paſſed to the bottome, without ony hurt of his bodie: he was decerned *ordeil* & innocent. Bot gif he did not fal to the ground, bot did ſwimme abone; he was condemned as fowle of the crime; as is written in the auld laws of the Brittones. *Verb. Ordalium.* And be *Cuiac. li. 2. de feud. Purgatio vulgaris*, is diſcharged bee the Cannon law. *c. dilecti. extr. de purgatione vulgari. c. ex tuarum. 8. de purgat. canonica*: And likewaies be the lawes of this realme it is forbidden as vnleaſũ. *Aſſ. Reg. Da. c. Stat. etiam. 30. In fine vbi pro foſſam, lege aquam. Stat. Alex. c. Statuit Dominus 6.*

Iudicium Dei

Ordalium

Purgatio per ignem

Purgatio per aquam

Purgatio Vulgaris

And be the law of God it is commanded, that nane ſulde ſuffer their ſonne or dauchter to go throw the fire. Deut. 18. 10.

MANELETA, Ane kinde of evill and Peſtilent herbe, quhilk growes amangſt the cornes, called *Guld. de Iudic. c. 7.* The Law of *maneleta*, or of the Guld, was firſt inſtitute be King *Kenneth*, quha ordained that he quha throw his fault or negligence, ſufferis ſawen landes to be filed with noyſum herbes: For the firſt fault, ſall pay ane Oxe; for the ſecond fault, ten Oxen; and for the thrid fault, ſalbe remooved fra the poſſeſſion and laboring of the land. *Hector Boetius. lib. 10.* And gif ane mailer, or tennent, filis the land with guld, & will not clenge the ſamin; he may be puniſhed as ane ſeducer, quha bringis, or convoyis ane armie within his maiſters land, to wrack and deſtroy it. *Leg. Foreſt. ca. Si nativus. 28. de Iudic. c. 6.* And gif thy awin natiue man, or bondman (*natiuus tuus*) hes guld within thy lande; For ilk ſtock or plant thereof, he ſuld pay ane Mutton, as ane vnlaw. *Leg. Foreſt. d. c. 28. de Iudic. c. 27.* The quhilk lawe, and conſtitution is keiped and obſerved, within certaine partes of this Realme; quhair the tennent ſufferand the guld to grow amangſt his cornes, payis ane wedder or ſcheipe, to his maiſter.

Terra dominicales.

MANERIVM, landes laboured with hand warke, *quaſi manurium, à manu.* Ane mainnes, or domaine landes; Or *terræ dominicales*: Becauſe they ar laboured and inhabited be the Lord, and proprietar of the ſamin, gif there be twa mainnes, perteining to ony man that is deceaſed, the principal maines ſuld not be divided; bot ſuld remaine with his aire and ſucceſſour, without diviſion; togidder with the principall meſſuage. And full ſatisfaction ſuld be maid to his wife, or relict therefore, furth of the ſecond mainnes, or vtherwiſe. *Lib. 2. cap. Dos autem. 19. de Iudic. cap. 112.*

MANSVS, *A manendo*, ane habitation or dwelling place, ſpeciallie quhair husband-men, labourers of the ground dwellis a-landwart; to the effect they may labour their land mair commodiouſlie. *L. Si. plures. Nu. 9. C. de. condit. inſertis.* Molinæus *in Stil. cur. part. 3. c. 85.* Bot *Bartol. in l. Si ita. Nu. 10. de Aur. & argent. legat.* affirmis, ane Manſe to be als meikle lande, as may be gudlie tilled be twa oxen in the zeir. *Cuiac. lib. 1. de feud.* writtis, that *manſus*, is ſa-meikle lande, quhairby ane man may ſuſteine honeſtlie him ſelfe, and his familie, and pay the dewtie to his Maiſter, quhilk is called *Hæredium*. Bot in the practicque of this realme, it is rather called *Gleba*; That is, ane certaine portion of arable lande. In Latine *Terra culta*: Or *terra veluti nativi venditi cum gleba. h. e. terra, Qui nativi aſcriptitij vocantur. Lib: 2. c. Pluribus. 14.* And the four aickers of land, quhilk is graunted to the Miniſters of the Evangell, within this Lande, is called ane gleebe, the quhilk ſuld be free fra payment of ony teindes. I. 6. p. 5. c. 62. And *Carolus Magnus*, to the effect, that the Miniſters of the word of God, ſuld not periſh be hunger or povertie, gaue to ilk Kirk ane manſe. For the quhilk they ſuld paye na dewtie or ſervice. *Cuiac. Lib, 1. de Feud..*

Hæredium Gleba

MANVS

MANVS *Mortua, dimittere terras ad manum mortuam, hoc eſt, ad multitudinem ſiue vniverſitatem, quæ nunquàm moritur.* Quhilk vtherwaies is called *Mortificare terras*: That is, to giue and diſpone landes, to the hand or power of the Kirk, College, Communitie, or ony Vniverſitie, capable to poſſeede, bruik, or ioyis gudes or landes; The quhilk is ſaide *per antiphraſin (ſeu à contrario ſenſu.* Becauſe ſik Kirks, Colleges, Communities, or vniverſities, dois nocht die; albeit the particular members thereof ar mortall, alters, and deceaſis. *Ius Normand. Lib. 5. c. 7.* Quhilk is conforme to. *L. Proponebatur. 76. ff. de iudiciis.* Swa *Manus* may ſignifie power, as in the Latine toung. Or *Manus mortua*, may bee conforme to the Scottiſh word, borrowed fra the Dutch worde *Meinzie*, quhilk ſignifies ane multitude; and ſpeciallie of folke and people. And ſwa *dimittere terras ad manum mortuam*, is to giue landes to ony Vniverſitie, and multitude of people. Alwaies it is not leaſum to ony man to mortifie ony part of his lands to the Kirk, without conſent of the King. *Lib. 2. c. Notandum. 26.* Becauſe the King may be thereby prejudged in his tennendrie, dewtie & ſervice fra the quhilk the Kirk-men in auld time wer exeemed. *Meinzie*

MARK, *In tractatu deponderibus & menſuris*, ſignifies ane ounce weicht, or halfe ane pound, quhairof the dram is the aucht part. Like as the ounce is the aucht parte of ane mark. *Cheſſa. in Conſuetud. Burgund. Rubric. 1. §. 7. Verb. 65. ſolz Turnoys: ſolidus (inquit) in iure capitur pro aureo, quorum. 72. faciunt libram auri. Et duodecim vnciæ faciunt Libram, & octo vnciæ marcam. Gl. & Ia. Fabr. in. §. nos autem. verb. ſolidos. inſtit. de attil. tutor.* Dram. Solidus Libra

MARCHETA, King *Evenus* did wickedlie ordaine, that the Lord or maiſter of the ground, or Land, ſuld haue the firſt nicht of ilk maried woman within the ſamin. The quhilk ordinance, was after abrogate be King *Malcolme* the Thrid; quha ordained, that the Bride-groome ſulde haue the vſe of his awin wife. And therefore ſuld pay ane peece of money, called *Marca. Hector Boetius. lib. 3. c. 12.* For the quhilk, certaine Kye, was vſed to be payed. *Lib. 4. cap. Sciendum. 63.* Bot vtherwaies in my opinion, Mark, or March, ſignifieth ane horſe: In the auld French, Iriſh, and Dutch tounges. For in the French toung, *Marcher*, is to ride, or gang; as *Marcher devant*, to ride or gang before. And *Paulus Diaconus. Hiſtor. Longobard.* writtis, that *Mar* is called in Latine, *Equa*, quhilk wee call ane Meare. *Alciatus de ſingulari certamine. c. 32. Marcam (inquit) Germani equam dicunt, vnde Marcomanni (qui hodiè dicuntur Moravi) equitatu pollentes populi. Et Maroboduus Rex Marcomannorum, cui corpus inſtar equi erat.* Mair-over, I finde ane auld conſtitution, written be *Lotharius Imperator, & Carolus Rex*, In this maner: *Vt miſſi noſtri, in illorum miſſatijs (h. e. commiſſarij noſtri in iis locis ad quos mittuntur) curam habeant, ne homines noſtri, aut alij quilibet, vicinos ſuos maiores, vel minores, tempore æſtatis, quando ad herbam ſuos caballos mittunt: vel tempore Hyemis, quando Mareſcalli illos ad fodrum dirigunt deprædentur, aut opprimãt.* Be the quhilk it is manifeſt, that *fodrũ*, is a dutch word, *pro pabulo equorũ*, quhilk we cal fodder, & *marchalcus* or *mariſcallus*, is a maſter of ſtable, or a ſervãd that hes cure of the horſe Mar. Fodrum. Marſchalcus.

Marche Schalk Trimarchiſia. Horſnarſchall. Downe.

for *March* ſignifies ane horſe, and *Schalk* in Dutch, is ane ſervand, as *Godſchalk*, the ſervand of God. And *Alciatus.d.c.32.* Affirmis that the troupes of horſe-men, in the armie of *Brennus*, was called *Trimarchiſia*, becauſe ilk man had three horſe. And in the ſamin ſignification, we vſe the word, Horſ-marſchel: Quhair horſe is adjoyned, for interpretatiõ of the word *Marche*. As likwaies in *Silverdown hill:* This word hill, is the interpretation of the vther word Downe, quhairof the ane, and the vther ſignifies ane thing. In Latine, *Mons*. Swa horſ-marſchel, is ane ſervand that keipis or curis horſe, as is commounlie vſed within this Realme; Quhilk opinion ſindrie Germane writers confirmis, and ſpeciallie the *Scholiaſtes* of *Guntherus.lib.8.Auſtriados*. Swa leavand to ilk man his awin opinion and judgement, free to himſelfe: I think that *Marcheta mulieris*, is the raide of the woman, or the firſt carnall copulation and conjunctiõ with her; quhilk in reſpect of her virginitie, is maiſt eſteemed be men. Quhilk interpretation is confirmed alſwa bee *Cuiac. Lib. 1.de feudis*.

Maritagium legale

MARITAGIVM *Hæredis*, The mariage of ane aire maill or femaill, quhilk is modified and liquidat be the Lordes of the Seſſion, to ane certaine ſumme of money, after conſideration of the rentall, and valure of the landes perteining to the aire; quhilk is either legall, or conventionall. The mariage Legall, is that quhilk be the diſpoſition of the Law, perteinis to the ſuperiour, and Over. lord. For the mariage of ane aire maill, or femail of landes halden be ſervice of warde and relieue, being within leſſe age, or being of perfite age, and not maried the time of the deceaſe of his father, or vther predeceſſour, to quhom he is aire, perteinis to his immediat ſuperiour; be the commoun diſpoſition of the law of this realme. And gif there be maa ſuperioures, the mariage perteinis to the firſt, and eldeſt ſuperiour, to quhom the predeceſſoures of the ſaid aire, maid firſt leageance and homage: Or of quhom they haue the firſt infeftment of their landes. *Leg. Foreſt.c. ſi alicui. 75.* Mair-ouer, gif ane aire haldis certaine landes be ſervice of warde of the King immediatlie: And certaine vther landes be the like maner of halding immediatlie of ane vther ſuperiour, Spirituall or Temporall: The mariage of the aire, ſuld perteine to the King allanerlie, without ony reſpect of the quantitie of the lands, or of the prioritie, or poſterioritie of the halding: Becauſe the King hes not ane peere or companion, far les ane ſuperiour within his realme. *Lib. 2.c.Reſtituere.44.c.45. Maritagium conventionale*, is that quhilk cummis not be diſpoſition of the Law, bot be the conventiõ & conſent of parties: As quhen ony man haldis his landes in blench, or in few-ferme: His awin, or his aires mariage, na-waies thereby perteinis to his ſuperiour: Bot zit gif hee payis ony dewtie for his landes *nomine albæ firmæ*, or *nomine feudi firmæ*, *vno cum maritagio hæredis cum contigerit*: Gif he happenis to deceaſe, the mariage of his aire, nocht being maried, perteinis to his ſuperiour, not be the nature of the halding of his landes, bot be the convention and proviſion conteined in his infeftment

The mariage perteinis to the eldeſt ſuperiour.

The mariage perteinis to the King.

Maritagium conventionale

feſtment. The availe of anc aires mariage, is either ſingle or double. For gif the ſuperiour requiris not ane aire, to marie, and the aire marie without his conſent: The ſuperiour ſuld obteine allanerlie for his mariage, be the eſtimation of the ordinar judge, ſa-meikle as may be ane competent ſumme, or tocher to the ſaid aire, conforme to his zeirlie rente: Or gif the aire refuſis to marie, hee cannot be compelled to doe the ſamin; *Quia matrimonia debent eſſe libera.* Bot quhen he cummis to perfite age, he ſall giue to his ſuperiour, als meikle as he micht haue fra ony vther perſon, for the ſame mariage, before he receiue his landes out of the hands of his ſuperiour, *quia maritagium eius qui infra ætatem eſt, de mero iure pertinet ad dominum feudi. leg. Foreſt. c. Si quis. 66.* The double availe of the mariage of ane aire, perteinis to the ſuperiour, quha makis ane lauchfull offer of ane partie, to the aire in mariage: Providing that the partie offered, be of equall parage. For gif the ſuperiour dois marie the aire, with ony perſone in diſparage, as with ane burgeſſe man, or with ane villaine. Gif the aire, bee of the age of fourteene zeires, or mair, and gives his conſent to the ſaide mariage; the ſamin is gude and valiable of the law. Bot gif the aire be within the age of fourteene zeires, quhair-throw he may nocht giue ane lauchfull conſent to his mariage. In that caſe, gif his kinſman compleinis, the Over-lord ſall tine and omit the warde; and all commoditie that he may haue thereby, vntil the aire be of lauchful age of twentie ane zeires; Quhilk ſalbe converted and employed, be the ſight of his friendes, to his vſe and commoditie, be reaſon of the ſchame and diſhonour done to him. *Leg. Foreſt. c. Si qui domini 65.* Quhilk is conforme to the Lawes of England. *Hen. 3. ſtat. Merton. c. 6. c. 7.* Swa gif the mariage of ony aire, or heretrix, be fallen in the ſuperiouris handes; and the aire beand lanchfullie required be the ſuperiour, or his donatar, or be ony cled with their richt, to marie ony agreeable partie without diſparage offered to him, refuſis to do the ſame, and maries ony vther perſon, without the licence and conſent of the ſuperiour, or his donatar; He aucht, and ſuld be reaſon of his contempt and diſſobedience, pay not only the ſingle availe of his mariage; bot alſo the double thereof: That is, als meikle againe, as the ſingle, be the modification of the judge, after the zeirlie rental, availe, and quantitie of the landes and living, perteining to the aire. And mair-ouer, in this caſe, be the auld law of this Realme, it is leaſum to the ſuperiour, to hald and reteine the landes, albeit the aire be of twentie ane zeires of age, vntill he be compleitlie ſatiſfied of the ſaide double availe. *Leg. Foreſt. c. de hæredibus. 64.* And it is to wit, that the ſaide requiſition, ſuld be maid in this maner. The ſuperiour his donatar, or the aſſignay maid and conſtitute be the Donatar, or ony vther perſon, haueand richt thereto; aucht, and ſuld be him ſelf, or be his lauchful procuratour, havand ſpeciall power in writ, to that effect; offer to the aire, perſonallie apprehended, then being of lauchfull age for mariage, ane agreeable partie, expreemand the ſaid perſonis name, and ſur-name, without diſparage to him: Sick-like beand of lauchfull age, and conveenient for

Single and double availe of mariage

The forme how ane aire ſuld be required to marie.

mariage,and require the ſaid aire to ſolemnizate, & compleit the band of matrimonie, in face of halie Kirk, with the perſon that is offerred; And for compleiting thereof, aſſigne and affixe ane lauchfull daye; To wit,the ſpace of threttie daies at the leaſt to him to compleit the ſamin; within ony Kirk,appoynted be the maker of the offer,to that effect. And in the meane time of the ſaid requiſition, or before, or after the ſamin, the donatar, or ony vther aſſignay, havand richt and title of him,or of the ſuperiour (for the ſuperiour himſelfe,needis nocht to mak ony intimation of his richt & title, he beand notourlie knawin to be ſuperiour) ſuld make be himſelfe,or be his procuratour,intimation of the richt,and diſpoſition maid to him; and ſchaw the ſame,and mak the ſamin patent, in preſence of the ſaid aire; and cauſe the ſamin to be read before him, or giue,or offer him ane copie thereof: To the effect,that he thereafter may not pretend nor alleage ignorance there-anent. And thereafter the ſaid perſon, *viz.* The ſuperiour, or ony vther cled with his richt, bee quhom,or in quhais name the ſaid requiſition & intimation was maid; aucht and ſuld perſonallie,or be his procuratour,compeir at the day,& kirk appoynted of before: Bringand with him the ſaid partie offered,in proper perſon, reddie and willing to marie,quha was offerred in mariage; And there in lauchfull time, before twelue houres of the day, offer him reddie to accompliſh and fulfill that quhilk he offered, and required to be done of before. And to that effect, there remaine quhill the Sermone,or divine ſervice be done, or quhill ane houre after noone. And gif the aire compeiris nocht,or compeiris and refuſis to marie;he ſuld take inſtrumentes thereupon,in the handes of ane ſufficient Notar, of the refuſe maid be the aire, or of his none-compearance; and the offer of the agreeable partie;togidder with the intimation foreſaid;quhilk cannot be proven be witneſſe,bot be writ. *Pen. Feb. 1567.* The Laird of *Drumlangrig*,contrair *Marion Carrutheris. 21. Iunij. 1568. William*,Lorde *Forbeſſe*,contrair the Laird of *Boyne. 4. Iunii. 1575.* The Laird of *Glenbervie*,contrair the Laird of *Vdny*

MARITAGIVM Tocher gude. *Lib. 2. c. dos autem 19. in fine. c. poteſt. 21. cum ſeqq. Vid. Dos.*

MARVS, Ane officiar,or executour of ſummondes. I. 1. p. 9. c. 111. p. 13. c. 140. *Vide Recordum.* He is vtherwaies called, *Præco regis. Lib. 1. cap. cum autem. 8.* Quhair it is ſaid, *Quod die dominico vox præconis ceſſare debet*, becauſe na ſũmonds ſuld be execute vpon ane Sunday. The kings Maire is of ane greater power and authoritie, nor the meſſengers or officiares of armes, and ſpeciallie in juſtice aires,and puniſhing of treſpaſſoures. Bot now the ſaid office is given in fee and heritage to Maires of fee, quha knawis nocht their office: Bot ar idle perſones,and onely dois diligence in taking vp of their fees,from them, to quhome they doe na gude,nor ſervice to the King.

Præco Regis

MATERTERA, properlie is the Mother ſiſter, *Quaſi Mater altera.* Bot ſum-times improperlie it is taken for the Father ſiſter, in Latine,

Latine *Amita*. For *Lib.2.c.Deficientibus 34.Poſt Avunculum.h.e.patruum eiuſque liberos, Matertera eiuſque liberi habent ius ſucceſſionis.* And be the Law of this Realme, the bairnes deſcendand of the mother ſiſter, hes na richt of ſucceſſion: Quhilk in the awin place and degree, is competent to the bairnes borne of the Father ſiſter; quhilk is manifeſt. *De iudicib.c.hæredum.113.c.Item Nota.115.Vbi expreſſe, Matertera dicitur eſſe Amita.vid.Avunculus.*

MELLETVM, *Medletum.lib.1.c.2.* Ane French word, *Melle*, diſſenſion, ſtrife, debate, as we ſaye, that ane hes melled or tuilzied with ane vther. And in the actes of Parliament, and practicque of this realme, *Chaud-mella* is ane faulte or treſpaſſe, quhilk is committed be ane hoate ſuddaintie, and nocht of ſet purpoſe, or *præcogitata malitia.Iam.1.11.* Mar.c.51. And in *Libro* M.*Willielmi Skene fratris mei, Commiſſarij Sancti Andreæ.Fol.121.* It is written, that Flycht-vyt is libertie to hald courts, and take vp the vnlawe *pro melletis.* Becauſe Flycht, is called flyting; In French, *melle*, quhilk ſome times is conjoyned with hand-ſtraikes. And in ſumme buikes *Placitum de melletis*, is called the Mute, or pley of beating or ſtricking. *Lib.1.c.2.*

MENETVM, *Leg.Foreſt.c.2.* Ane ſtock horne. In the quhilk place, it is wrangeouſls written *Cornuare minutim, pro Cornuare menetum*, to blaw ane ſtock horne, quhilk commounlie is maid of Timmer & wood, or tree, with circles & girds of the ſame, quhilk is zet vſed in the Hie-lãds and Iles of this realme: quhairof I haue ſeene the like in the Cuntrie of *Helvetia*, in the zeir of God, ane thouſand, fiue hundreth, ſextie aucht, amangſt the *Zuitzers.*

MEREMIVM, *muremium*, The timmer of ane houſe. *Lib.4.c.Si quis 55.* In the Engliſh Lawes, *Carta de Foreſta.* It is called *maremium.* And ane charter given be *Iacobus Seneſcallus Scotiæ* (king *Iames* the Firſt, before his Fathers deceaſe) To *Thomas Browſter*, of the landes of *Sacerland*, beſide *Paſlay*; now perteining heretablie, to *Matthew Steward* of *Barſcube*, cõteinis *poteſtatem incidendi meremium*; That is, licence and power to cutte ſa-meikle greene woodde in the Kingis Foreſt of Raiſe, as ſuld be neceſſar to the ſaid *Thomas*, to big houſes to his awne uſe.

MESE Of Herring, conteinis fiue hundreth, for the commoun vſe of numeration, and telling of Herring, be reaſon of their greate multitude, is vſed bee thouſandes; And therefore ane Meſe, comprehendis fiue hundreth, quhilk is the halfe of ane thouſand. From the Greek word μεσον, In Latine *medium.*

MESSVAGIVM, *Lib.2.c. Dos autem.19.c.Si quis plures 30.cum. ſeqq.* Ane principall dwelling place, or houſe within ane Barronnie, quhilk in the laws of Englãd, is called Manour, ane hall, place, or court ludge, or Manour houſe. Albeit *Valentine Leigh*, in his buik of ſurveying of lands affirmis *meſſuagium* to be the tenement or lands arable, And the dwelling houſe or place, or Courte hal thereof, to be called *Sit*, from the Latine *Situs*: quhilk wee call the ſeate, or on-ſette. And it is not leaſum *Manour*

to

giue the principall meſſuage, to the wife within burgh, in life rent. *Leg. Burg. c. Nullus. 107.*

MILITES, *Leg. Malc. Mak. c. 2.* And generallie in the auld lawes of this realm, ar called free-halders, haldãd their lands of barons in chief; quha hes na power to hald courts of life and lim: bot onely of injuries, wrang, and vnlaw. Bot *militare ſervitium*, Knichtes ſervice, is that maner of halding of lands, quhilk is called, ſervice of ward and relieue. *Et miles opponitur Soccomanno*, and he quha haldis his landes, *Per militare ſervitium lib. 2. c. Si quis 30.*

Servitium militare

MISERICORDIA, Ane merciment, amerciament or vnlaw. *Leg. Foreſt. c. 5. de iudic. c. 40. Miſericordia domini regis*, or the Kingis merciment in purpreſture. *Lib. 2. cap. dicitur. 75. vid. Forisfactum. vide Amerciamentum.*

MOTE, Mute, pley, action, quarrell. Quhen King *Malcolme* the Second, gaue all his landes to the Barronnes of this realme; he reteined to himſelfe *montem placiti de Scona*, The mute hill of *Scone*: quhair hee micht hald his courtes and do juſtice to his ſubjects, in deciding their pleyes, and controverſies. *Leg. Mal. Mak. in prin.* Mute in the Lawes of this realme is called *placitum*. And likas in the civil law, actiones ar divided in civill and criminall: Swa *placitorum, aliud eſt ciuile, aliud criminale.* Pleyes ar civill or criminall: Civill ar called actiones of injuries, wrang, and vnlaw. *Leg. Malc. Mak. c. 2.* And concernis pecuniall paines, or lands and heretage. Criminall pleyes, touchis life or lim, or capitall paines, called *pœna ſanguinis. Lib. 1. c. 2. c. 3.*

MORT-GAGE, *mortuum vadium, dicitur pignus, cuius fructus, vel reditus percepti, in nullo ſe acquietant.* It is ane French worde, ſignifies ane deade wed, ſik as ane certane ſumme of ſilver, given vpon landes in wedſet, and vnder reverſion; quhilk is called ane deede wed; Becauſe be the auld law of this realm, the profit thereof: that is, the annual of the ſilver, is recokened as ane parte of the ſtock & principal ſumme. And therefore the ſaid ſtock is dead, without ony profite, as ane barren and dead tree, quhilk producis na fruit. *Lib, 3. c. 4. c. 6.* Contrair the commoun forme of alienation of landes vnder reverſion, dailie vſed within this realme, called *pactum de retro -vendendo*, quhair be the annuell, is zeirlie payed, vntill the redemption of the landes. At the quhilk time, the principall ſumme ſuld be likewaies compleitlie payed. And ſwa baith the annuell, and the ſtock being payed, the profites ar not recokened in the ſtock, bot ilk ane of them ar ſeverallie recokned, and ſeverally payed, ſa-meikle for the profite, and ſa meikle for the principall ſumme. *vide Vadium.*

MVLIERATVS *Filius*, is ane lauchfull ſonne, gotten with ane lauchfull wife. *Lib. 2. c. Si autem 22. Ex legitima muliere ſeu vxore, quia mulieris appellatione vxor continetur. L. Mulieris. 13. & ibi Gl. de verb. ſignif.*

MVRTHRVM, *Lib. 1. c. 2. lib. 4. c. 7.* Quhairof ſum is called, privat, that is mannis ſlauchter, quhairof the author is vnknawin: Quhairof the inquiſition perteinis to the crowner; As quhen ane perſon is founde ſlaine,

ſlaine or drowned, in ony place or watter. Vther is publick committed be fore-thocht-fellonie, *Quia non debet murthrum adiudicari, vbi infortunium interuenit: ſed locum habeat murthrum, in interfectu per feloniam.* And ſwa murther is committed be fore-thocht-fellonie, and not be ſuddaintie, *Chaud-mella*, or *infortunium*: That is, be chaunce or fortune. *Leg. Malcolm. Mak. cap. 2.* And in the lawes of England. *Anno 13. Edward. 2. cap. 1.* Murther is quhen ony man be ane propenſed malice, lyis in waite to ſlay ane vther man. And according to his malicious intent, ſlayis him. *Molineus in ſtil. Cur. Parl. part. 1. cap. 13.* Conforme to the law of *Normandie. Lib. 12. cap. 1.* Affirmis, that murther is different from ſimple ſlauchter. Becauſe murther is committed wittinglie, and willinglie, bee ane quha offet purpoſe lyis quietly in awaite for that effect. And ſlauchter is committed without ony fore-thoucht-fellonie, vpon ane haiſtie ſuddantie, quhilk in Latine is *Rixa*; And in French, *Chaud-mella*, In the quhilk place he writtis, that three crimes perteinis to the high juſtice; wilfull fire, raviſhing of weemen, and murther. Bot be the law of this Realme, foure crimes ar called the foure poyntes of the Crowne; wilfull-fire, raviſhing of weemen, murther, and robberie or rieſe: Becauſe the juriſdiction, or cognition thereof, perteinis allanerlie to the King, and to na ſubject Spirituall, nor Temporall, except the ſamin be ſpeciallie granted to him be the King. *Lib. 1. c. 2. leg. Malcom. Mak. c. 4. lib. 4. cap. Die lunæ 13. aſſ. reg. Da. c. 1.*

Rixa.

Pleyes of the crown

N

NAMARE, *Namos capere*, to take ane poynd, or ane diſtreſſe. It is ane auld Saxon word: For *Naman*, in latine *Pignorari ſiue pignus auferre*. And *Namatio*, ſignifies the taking of ane poynd. *Leg. Britonum. verb. Pignorari.* In the Law of *Normandie*, *Nami* commounlie ſignifies ony gudes or geare moveable, or vn-moveable, taken for execution of ane decreet. *Pignora capta, & bona capta pignori. vt in L. a Dino Pio. 15. ff. de re iudicat.* Be the Laws of this realm, na poynd ſuld be taken, bot for ane confeſſed or proven debt. And the ſamin ſuld be publicklie ſchawin, & maid manifeſt to all paſſengers be the way, and to all parties following the ſamin. *Lib. 4. cap. Si quis namos 30. cum ſeqq.* Na man may poynde within ane vther mannis boundes or juriſdiction, bot for debt aucht and to him, except the Kingis Baillie be preſent. The poynd or diſtreſſe, ſuld be conforme to the quantitie and valure of the debte. Na perſon may be poynded, bot the debtour, or his ſovertie or pledge. The poynd ſuld remaine within the ſamin Barronnie, quhair it is taken, in ane place perteining to him, quha takis the ſamin, or at the leaſt, in the nixt adjacent barronnie, within the ſamin Schireffedome, and not in Fortalices or Caſtelles. *Stat. 2. Rob. Br. cap. Item ordinatum. 8. Curia de namo vetito*; that is, of deforcement, be the auld Law, perteinis to the king allanerlie. *De Maritag. cap. Sciendum. 17.* *Nami*

NATIVI, Borne ſlaues or ſervandes, *vide Bondagium.*

NONE-ENTRES, Is quhen ane vaſſall, veſt and ſaiſed in the fee and propertie of the landes deceaſis, leavand behinde him ane aire, quha beand of lauchfull age, may enter to the landes, be taking of ſaiſing thereof, and zit enters nocht. In the quhilk caſe, the landes ar in the handes and power of the immediate ſuperiour, be reaſon of none-entreſſe, *Propter negligentiam hæredis, jus ſuum non proſequentis. Stat. Rob. 3. Cap. Nota. 21.* Mair-over, there is twa kinds of None-entres: The ane ſimple, nocht followand after ane warde, in the quhilk, the ſuperiour of the Landes, vntill they be declared be decreete of ane Ordinar judge, to bee in None-entreſſe, ſuld haue allanerlie the retoured maill thereof, conforme to the new extent. And after the declaratour, the ſuperiour may remoue the tennentes, or occupie the landes, as he pleaſis, induring the time of the None-entreſſe. The vther kinde of None-entreſſe, is that quhilk followis after ane warde: As quhen landes ar halden be ſeruice of warde and relieue; and the aire is *Minor*, and may nocht enter: The ſamin landes perteinis to the ſuperiour, be reaſon of warde, and nocht of None-entreſſe. For quhair there is warde, there is na None-entreſſe, be reaſon the warde, ſa lang as it induris, ſtoppis the None-entreſſe. Bot quhen the warde expyris, togidder with the twa termes of the relieue; The None-entreſſe beginnis, gif the aire beand of perfite age, enteris nocht to the landes, and obteinis ſaiſing thereof. The quhilk None-entreſſe, requiris na declaratour, bot is of the like nature, with the warde preceidand. And induring the time thereof, the zeirly mailles and dewties of the landes, as they giue be tack and aſſedation, perteinis to the ſuperiour; or he may remooue the tennentes and poſſeſſoures therefra, and occupie the ſamin as he pleaſe, like as he micht do, in the time of the warde. Mair-ouer, this kinde of None-entreſſe, beand given and diſponed be the King, or vther ſuperiour, to the appearand aire himſelfe, or to ony vther perſon, is ſufficient and valiable to the donatar, for all zeires and termes preceeding the gift and diſpoſition, and three termes after the perfite age of the aire allanerlie. And endis and ceaſis after the iſchue and out-running of the ſaids three termes. And gif the aire enters nocht within the ſaid ſpace: It is leaſum to the King, or vther ſuperiour, to diſpone of new, the ſaid none-entres, to quhom he pleaſis, to be vſed be him, vnto the entrie of the lauchfull aire; as was decerned and ordained, be the Lordes, and Auditoures of the Checker, in the Moneth of Iulij. 1596. And cõforme thereto, decided be the Lords of the Seſſion 9. Iulij. 1597. The Laird of *Caſtringtoun*, contrair the Laird of *Heſtilhead* quhilk is not diſconforme to the laws of the fewes, quhair be the aire of the vaſſal, not deſirand inveſtiture, or poſſeſſion fra his ſuperiour, within zeir and daye, after the deceaſe of the vaſſall his predeceſſour, tinis and forefaltis his few, and the ſamin perteinis to his ſuperiour. §. *1. Et ibi. Gl. quo temp. miles inueſtitur, petere debent. lib. 1. de feud.*

twa kinds of none-entreſſe

NOVA *Diſſaſina*, recent ſpuilzie or ejection. *vid. Diſſaſina.*

O

OCHIERN, *Ogethartus*, Isane name of dignitie, and of ane free-halder. *Stat. Alex. c. recordatio. 26.* and appeiris to be of equall honor, and preheminence with the ſon or daughter of ane *Thane*, quha baith hes the like *Marcheta*, *viz.* twa Kids, or twelue pennies. *Lib. 4. c. ſciendum 63.* And likewiſe the *Cro* of ane *Oye* of ane *Thane*, & of an *Ochiern* is four Kye. *lib. 4. c. ſtatuit. 64.* And the vn-lawe quhilk the King may take fra ane *Thane*, is ſex Kye, and from ane *Ochiern*, fifteene ſcheip, or ſex ſchillings. *Aſſ. reg. Da. c. recordatio. 17.*

ORA, ane auld Saxon worde, and ſignifies mettall, ſik as braſſe or golde: And mairouer, in auld times it was ane piece of cunzied ſilver or golde. For *tres ora aurea*, are the price of ane Cowe. *lib. 4. c. ſciendum 63.* Vre.
From this comes the worde zit commonly vſed, *Vre*, as leid *Vre*: and in the Garviach within the ſchireff-dome of *Aberdene*, there is ane hill called *Dounyndure*, *monticulus metalli*: and the ſcheep there paſtured, hes their teeth couloured with zeallowe coulour, quhilk is ane taken of abundance of mettall.

ORIGELLVM, *quaſi aurigellum*, ane Habergion, maid of mailzies quhairof the edges are of mailzies of zellow coulor, reſembland the coulour of golde or braſſe. *Stat. 2. Rob. Br. c. ordinatum 27.* quhair it is called *Habergellum. vid. Hawbert.*

OVT-FANG-THIEF, *vid. Infang-thief.*

P

PANNAGIVM *Porcorum*, ane French worde, ſignifies the dutie quhilk is giuen to the king, for the paſtourage of Swine in his Forreſtes, *Leg. foreſt. c. 5. 6. 8.* As it is manifeſt in the lawes of England, in the chartour of Forreſtes, quhair *Pannage*, is called ane certaine ſumme of ſiluer, quhilk the awner of ane Parke, or of ſome great wood, quhair-in there is great ſtore and abundance of Maſte, Aike, Betche, or vther trees, vſis to take of his tennents or vthers, for their Swine, that ſall feede there, betuixt *Michael-mes* and *Martine-mes*. *Item Pannagium*, ſignifies an pairt of the Kingis demaine, or propertie, giuen to his ſecond, or vther zounger ſonne, or couſing, quhairof *Chopinus* writes, *de domanio regis Franciæ* But hereof no mention is maid in the lawes of this realme.

PARTICATA, *vel perticata terræ*. From the French word *perche*, meikle vſed in the Engliſh lawes, ane ruid of land. *leg. burg. c. 1. c. particata. 140. ſtat. Wilh. c. perticata. 13. quon. attach. c. de brevibus 31.* It is of verity, that three beare cornes without tailes, ſet togidder in length, makis ane inche Inche.
Of the quhilk cornes, ane ſulde be taken off the mid rig, ane off the ſide Fute.
of the rig, and ane off the furrow. Twelue inches makis ane fute of mea- Eln.
ſure: Three fute and ane inche, makis ane Elne: Sex elnes lang, makis Fall.
ane Fall: quhilk is the common lineall meaſure and mette. And ſexe elnes lang, and ſex elnes broad, maks an ſquair & ſuperficiall fall, of mea-

ſured land. And it is to be vnderſtand, that ane rod, ane raip, ane lineal fall of meaſure, are all ane, and ſignifies ane thing, for ilk ane of them conteinis ſex elnes in length albeit ane rod is ane ſtaffe, or gade of tymmer, quhairwith land is meaſured, in latine *pertica*. Ane raip is maid of towe, ſik as hempt, or vther ſtuffe, and ſa meikle lande, as in meaſuring falles vnder the rod, or raip, in length is called ane fall of meaſure, or ane lineall fall, becauſe it is the meaſure of the line, and length allanerly. Like as the ſuperficial fal is the meaſur, baith of the length, & the bredth *quia linea eſt menſura ſolius longitudinis, ſuperficies verò eſt menſura longitudinis, & latitudinus*. Item, ten falles in length, and foure in bredth, makis ane ruid: foure ruid makis ane aiker. And ſwa ane diſcreet and true man, may meaſure ilk aiker of land, lang or ſchort, with rod or raip, be the meaſure of the fall. Swa that he keepe juſt count, and gud remembrance, that the endes of the rod, or raip, be richtly and eauen laide, without fraude or guyle. But it is neceſſare, that the meaſurers of land, called landimers, in latin, *agrimenſores*, obſerue and keep, ane juſt relation, betwixt the length and the bredth of the meaſures, quhilk they vſe in meaſuring of landes, quhairanent I finde na mention in the lawes and regiſter of this realme, albeit ane ordinance thereanent be maid be King *Edward* the firſt, King of England, the 33. zeir of his reigne: and becauſe the knawledge of this mater is very neceſſare, in meaſuring of lands, dayly vſed in this realme. I thought gud to propone certaine queſtions, to *Iohn Naper*, ſear of *Merchiſtoun*, ane gentleman of ſinguler judgement and learning, ſpecially in Mathematicque ſciences. The tenour quhairof, and his anſweres maide thereto followis.

Rod.
Raip.
Fall lineall and ſuperficiall.
Ruid.
Aiker.
Landimers, Agrimenſores.

Firſt, be quhat rule ſall we vnderſtande the length and bredth of the fall? It is anſwered: There is twa ſortes of falles, the ane lineall, the vther ſuperficiall: the lineall fall, is ane met-wand, rod, or raip, of ſex elnes lang, quhair be, length and bredth, are ſeuerally met. Ane ſuperficiall fall of lande, is ſa meikle boundis of landes, as ſquairly conteinis ane lineall fall of bredth, and ane lineall fall of length, quhairof followis, that be the lineall fall, lande is meaſured, and be the ſuperficiall fall, lande is rekned. Nowe quhair it is inquired be quhat rule the length and bredth of ane fall ſall be vnderſtand. I anſwer, That quhen-ſo-euer the elnes of bredth being multiplied be the elnes of length, do produce 36. elnes: the number product, is ane ſuperficiall fall: and the ſaide bredth and length, are the juſt bredth and length that makis ane fall. Swa 36. elnes lang, of ane elne broad, are ane fal of land. Item, auchtene elns lang, twa elnes broad, are the like: alſwa, twelue elnes lang, of three elnes broad, Or nine elnes lang of foure elnes broad, are ane fall. Laſtly, ſex elnes alwayis, that is to ſay, ſex elnes lang, and ſex elnes broad, makis ane fall. To this fall the little ruid, or ruid of warke, or of buirdes, or of maiſone, or sklait warke, is equal, quhilk is maiſt properly the ruid, as after followis.

Length & breid of ane fall.

Secondly, how mony kindes of ruids are in vſe? Anſwer. Twa, quhairof the ane is proper, the vther improper. The ruid properly, is ane ſuperficiall

Twa kinds of ruid.

ficiallfall,and conteinis threttie ſex ſquair elnes: Ane ſquair elne,being the boundes of ane elne in breadth,and ane elne in length, ſquarely incluſed. The vther vulgare and improper ruide of lande,conteinis fourtie of thir former ruides, or ſuperficiall fallis, and is the quarter of ane aiker of lande, becauſe foure of thir ruides makis ane aiker as ſaide is.

Thridly, be quhat rule may the juſt meaſure of ane aiker in length and breadth be vnderſtand? It is anſwered, Multiply be Arithmeticall multiplication,the number of the falles that ar in the length of the land, be the number of fallis that are in the bredth thereof: Euerie aucht-ſcore fallis of the number produced, and reſulting of the ſaid multiplication, is ane aiker: and therefore aucht-ſcore fallis of length, and ane fall of bredth,makis ane aiker: and foure-ſcore fallis of length, and twa fallis of bredth, makis ane aiker. Item fourtie fallis of length,and foure fallis in bredth makis ane aiker. Alſwa twentie fallis in length, and aucht fallis in bredth,makis ane aiker. Laſtly,ten fallis in bredth,and ſextene fallis in length makis ane aiker. Length & bredth of ane aiker.

Fourtly, ſeing there is ane kinde of meaſuring of land be Rod, and raip: quhat is the forme thereof? And gif there be ony maa forms, how are they called? and quhat is the forme and maner of the ſamin? It is anſwered. There be knawin too expert Mathematiciens, mony and diuers wayes to mette land,all agreand togidder in ane,but of the vulgar people there is but ane forme of metting vſed and vnderſtand, to wit, be rod and raip, that is to ſay, be ane rod or gade of ſex elnes lang: Or be ane ſtring or coard, of ſex elnes lang, ſtented betwixt twa ſtaues. The coarde being ane ſchaft length abone the pykes, or nether endes of the ſtaues. The ſaid rod or raip, or either of them, is called ane fall: to wit, the lineall fall foreſaid. With theſe fallis, ilke ſquare piece of lande, is met ouer the middis, quhat falles and elnes it hes of length, & thereafter is met croce ouer the middis, quhat fallis and elnis it hes of bredth. Thereafter the fallis and elnes of the length on the ane pairt, and the fallis and elnes of the bredth, on the vther pairt, are multiplied togidder, and the produce ſchawis the number of the aikers, ruides, elnes, quhilk the ſaid piece of land conteinis. As for example, gif the piece of land be 51. fal. three elnis of length, and 10. fallis 2. elnis of bredth: multiply 51. fallis 3. elnis: or $51\frac{1}{2}$ fallis to be 10. fallis 2. elnis: Or be $10\frac{1}{2}$ fallis; The product will amount to $532\frac{1}{2}$ fallis: Or 532. fallis, 6. elnis: quhairof euery aucht-ſcore fallis, a rane aiker. Swa 532. fallis 6. elnis, are three aikers and ane quarter, 12. fallis, and 6. elnis of met land. The maner of meaſuring of lands, be rod or raip.

PATRIA, *aſsiſa, vel recognitio per aſsiſam*, Ane Aſſiſe or inqueſt of cuntrie men, quhilk is called *recognitio patria. lib. 3. c. cum actem. 6. vid. Bona patria.*

PEDELLVS, *Leg. burg. c. citatio. 109.* The ſerjand or beddle of the burgh, quha ſuld execute ſummondes, make attachementes, or take poindes. *quon. attach. c. nullus 57.* quhairof they haue na power, without their awin juriſdiction. *Aſſ. reg. Da. c. nullus 53. Dicitur autem pedellus a pedo*

without their awin jurisdiction: *ass. reg. Da. c. nullus. 13. Dicitur autem pedellus a pedo h. e. baculo*, because all sik serjandes suld vse ane wand, staff, or halbert. Ia. 1. p. 6. c. 99.

Pedder. PEDE-*pulverosus*, ane French word, *pied puldreux*, duftie-fute, or an vagabound, specialhe ane merchand, or cremar, quha hes na certaine dwelling place, quhair the dust may be dicht fra his feet, or schone, *de Maritag c. si quis. 9. leg. burg. c. si burgensis. 141, de iudic. c. 47.* To quhom Iustice suld be summarlie ministred, within three flowinges, and ebbings of the sea. Ane pedder, is called ane merchād, or cremar, quha beirs ane pack, or creame vpon his bak, quha are called beirares of the puddill be the *Scottes-men* in the realme of *polonia*, quhairof I saw ane greate multitude in the town of *Cracowia. anno Dom.* 1569.

Pension of Cadzow. pension of Kirkpatrik PENSION, ane dewtie, sik as ane annuel-rent, for that quhilk in the act of Parliament. Ia. 2. p. 11. c. 41. Is called the pension of *Cadzow*: In the Checker rolles is called the annuel-rent of *Cadzow*. And siklik in the samin place mention is maid of the pension of the ferme-meil of *Kirkpatrik*, quhilk conteinis fiue chalder of ait-meill, quhilk the Abbot, and convent of *Paislay* payis zeirlie furth of the kirk of *Kirk-patrik* to the K. as an pairt of his annexed propertie, as is manifest in the Schireffe rolles of the Checker of K. Ia. 3. 1487. *In libris feudorum, Soldata* is an zeirly frie gift & donatiō; induring the lifetime of the giver, & is swa called, *a solido, quia plerumque in solidorū donatione consistit. §. 1. quis dicatur marchio. lib. 1. de feud.*

Soldata.

Pleyes of the Crown PLACITVM, From the French word, *Plaider*, pley, contention, strife, or debate, *Placitare, significat litigare & causas agere. Molinaeus in stil. suprem. cur. Par. part. 1. c. 6. part. 2. c. 3. Et D. Smith. lib. 2. c. 10.* Of the commoun weil of England. *Vid. Mote. Placita coronae*, pleyes, or criminall actiones perteining to the King is Crowne and jurisdiction allanerlie, or to his justice generall, quhilkis ar foure in number, robberie, or riefe: ravishing or deforceing of weemen: murther, and wilful fire, sik as burning of houses wilfullie, and malicioushie, *vid. Murthrum.* Quhairof, or of ony ane of them, gif ony happenis to bee convict, all his gudes perteinis to the King allanerlie, in the samin maner, as is statute of the gudes of traitoures. *Leg. Mal. Mak. cap. 3.*

PLEGIVS, an pledge, borgh, or cautioner, *dimittere terras ad plegiū*, To let landes to borgh, is quhen ony controversie, being for the possession of landes; the samin after inquisition, and tryall taken there anent given and committed to the last lauchfull possessour of the samin lands, vnder borgh and caution, that he sall restore the samin to him, quha sall be found to haue richt thereto. Ia. 2. p. 14. c. 62. Or quhen twa persones contendis be way of deede and armes, for the possession of ony landes; The superior thereof, may recognosce, or take to himself, the possession of the lands, vntill it be tryed, quha was last lauchfull possessour thereof; And then let the lands to him to borgh, and vnder caution, as said is. *Sta. Ro. 3. c. Notatus. Item*, the 12. No. 1500. Certain corns growand vpō debatable lands betuix the L. *Ruthven*, and the Laird of *Copemalindie*, be decreete

creit of the lordes, are lattin to borgh to the ſaid laird, he findand caution that the ſamin ſalbe furth cummand to them, quha recoveris the ſamin be law, without prejudice of the richt of onie of the parties theirannent in time cumming. And like as the over-lord, or judge for the cauſes foreſaid, lettis landes to borgh, to the poſſeſſour thereof, the tennent or poſſeſſour, *petit terras dimitti adplegium*, deſires the lands to be letten to him to borgh or vnder caution. *Stat. Rob. 3. c. 4.* *Petere terras adplegium.*

PORTEOVS, portuis. Ia. 1. p. 13. c. 139. Ia. 3. p. 14. c. 99. Ia. 5. p. 3. c. 5. *a portando*, quhilk ſignifies to carie, or beire: in French *portes vous*, and ſignifies ane catalogue, contenand the names of the perſones indited to the juſtice air, quhilk is given & delivered be the juſtice Clerk, to the Crowner, to be attached, and arreiſted be him, to compeire, and anſwere, to ſik accuſationes and crimes, as ſalbe impute vnto them, and the porteous conteins the names of them quha are of new indited, and the names of them quha were indited of auld and of before, and compeired not: And quhen onie Iuſtice aire is cried, or proclaimed, command is given be the juſtice to warne all perſones, alſweill indited of auld, as of new, to compeire in the ſaid aire, to vnderlie the law. The Crowner receivis the porteous as ſaid is, and caries the ſamin with him, vntil the attachements and arreiſtmentes be maid, conforme thereto, and reportes the ſamin againe to the Iuſtice court: That theirby he may be controlled in execution of his office, ſa far as concernes the making of attachements and arreiſtments or probation theirof.

POST-NATVS *filius*, ane ſecond ſonne, narreſt to the firſt begotten, conforme to the French word, *le puis aiſné. lib. 2. c. ſi ergo. 23. c præterea. 25. c. maritus. 32. l' aiſné*, is the firſt borne ſonne, and therefore *le puis aiſnè is poſt primo-genitum*, the ſecond ſonne.

PRIS Æ, ane French word *prinſes*, in latine *captiones*, ſik as ane poynd, diſtres, or moveable gudes, taken for execution of ane decreit: for be the lawes of France *priſe ſunt rerum mobilium: ſaſina verò immobilium, quia bona immobilia non capiuntur, ſed ſaiſiuntur. Rebuffus in conſtitut. Reg. in tract. de liter. obli. art. 5. gl. 2. et de præconum licitationibus. ar. 1. gl. 2.* Quhairanent I find ane ordinance maid *de modo capiendi priſas*, be King *David 2.* 18. Februar 1369. the 40. zeire of his reigne. *Priſæ ſeu captiones domini regis, perſoluentur & capientur, ſecundùm conſuetudines antiquitus approbatas, et de terris illis de quibus priſæ regis, et ſervitia debent ſumi, & quod in ijs faciendis non fiet taxatio iuxta numerum davatarum, ſed ſecundùm verum valorem bonorum.*

PROPORCITAS. *proportatio aſsiſæ*, the proport, report, declaration, or deliueranee of ane aſſiſe. *Stat. Alexand. c. ſtatuit dominus, 5. quon. attach. c. ſi quis appellet. 53. aſsiſa. reg. D. c. 9. c. ſtatuit 30. c. ſtatuit dominus 38.* Vtherwiſe, it is called, *veredictum aſsiſæ*, the veredict or ſuith-ſaying of ane aſſiſe. Becauſe the aſſiſours are ſworne to declare the trueth and veritie, and therefore are called *Iuratores*. Like as the aſſiſe is called *Iurata*, or *Iurata patriæ, ſive vicineti, lib. 2. c. dicitur. 74.* And in the Engliſhe lawes, ane *Iurie.* *Veredictum. Iuratores. Iurata. Iurie.*

PVRPRESTVRE, *Purpriſion*, ane French worde, for ane wrangeous vſurpatiõ, taking, or occupation of ane vther mans landes, quhairof there is three kindes, *Lib. 2. c. dicitur. 74. de iudicib. c. purpreſtura, c. 138.* The first is, quhen any man occupies vnjuſtly onye pairt of the Kingis domaine, and proper landes. Or quhen ony ſtoppis, or cloſis vp the Kingis common way, paſſage or ſtreete: Or returnis or divertis rinnand waters fra their richt courſe: Or within the Kingis towne and burgh, occupies the Kingis calſay, or commoun gaite, biggand vpon onie pairt thereof: Or remoueand onie thing there-fra: Or converting onie pairt thereof to his awin vſe. And generally, quhen onie wrangeous occupation is maid to the hurt and skaith of the Kingis tenement, the Kingis ſtreet, or common way: Or of the Kingis Burgh. The quhilk kinde of *Purpreſture* ſuld be decided before the Kings juſtice and his deputes, be ane condigne aſſiſe. And he quha is convict theirof, ſalbe in the kingis mercie, and puniſhed conforme to his will in his bodie, & in al his lands quhilk he halds of him: and mair-ouer ſall reſtore that quhilk he injuſtly bigged and occupied. The ſecond kinde, is quhen onie vaſſall occupies, and vſurps any lands againſt his ouer-lorde, vther then the King. Quhilk controverſie may be decided be the ouer-lord in his awin court, and gif the vaſſall is convict to haue done wrang, hee tynis perpetuallie all the landes quhilk he haldis of that ſuperiour. The quhilk juriſdiction and power of halding of courtes of *Purpriſion*, perteinis to ane Barron, and to vthers, quha are abone him in power & dignity, ſik as Erls & Lords. For na vaſſall, ſubject, nor vther tennent vnder ane Barron, hes power to hald ſik courts. *Ia. 3. p. 10. c. 79.* The thrid kind of *purpreſture*, is againſt ony vther except the King and the ſuperiour: As betuixt nichtbor and nichtbor, ſubject and ſubject: quhen ane wrangeouſly occupies the lande perteining to ane vther, or troublis him in his meithes, and marches: quhilk moleſtation perteins to the ſchireff, to be tried before him, be ane brieue, *de nova diſſaſina*, or *de rationabilibus diviſis*. Be the law of Englãd *an. 4. Edward 1, de bigamis. c. 4.* gif ony vſurpis, & occupies within the Kingis liberty, or ony vther place, contrair the King: Incontinent without proces or ordour of law, the king tuik the land in his awin hand, and thereafter it was leiſum to ony perſon, havand entres to compleine thereanent. The like forme is permitted be the lawes of this realme, anent the kingis cuſtomes. *Ia. 1. p. 1. c. 8.* And his annexed propertie. *Ia. 2. p. 11. c. 41.*

Three kind of purpreſi on,

PVTAGIVM, ane French word, huiredome or fornication. *lib. 2. c. in cuſtodijs. 50. c. vlt. 53.* Quhair it is manifeſt, that ane air femaill, being within ward, & of les-aige, & committand fornication, tynis & forefaults her pairt of the heritage, and the ſamin accreſcis, and perteinis to the reſt of the co-heirs, or comportioners, gif onie be. And gif their be an heretrix alanerly, quha commits the ſaid fault, all and haill her heritage, perteinis to the ſuperiour: But gif an heretrix of lands, hes bairnes lauchfully gotten in mariage: and after the deceaſe of her husband, in the time of her viduitie, committis fornication: neither ſche nor her bairnes, tynis the he-

heretage. *Quia putagium matris non adimit hæreditatem*; The huirdome committed be the mother, dois nocht diſheriſh the lauchfull bairnes.

Q

QVARENTENA *viduarum*, in the ſtatutes *Rob. 3. c. de viduis. 22.* from the French *la quareſme des veſues*, ſignifies the priviledge of fourtie daies, granted to widdowes, after the deceaſe of their husbandes, conforme to the Lawes of England, *anno. 20. Henr. 3. c. 1.* Quhair it is ſtatute anent widdowes, quha after the death of their husbands may nocht haue the dowrie, without pley: That quha-ſoeuer deforcis them of their ſaid dowries, of the landes quhairin their husbandes died veſt & ſaiſed, and it ſall happen the ſaids widdowes to recover the ſamin thereafter be pley or proces: They quha troubled and moleſted them, being conviſt of ſik wrangeous deforcment, ſall zeild and paye the damnages and skaith, to the ſamin widdowes. That is to ſay, the valour of the haill dowrie belanging to them, from the time of the death of their husbandes, vnto the day that the ſaides widdows, obteinis decreit in iudgmente. And the ſaid deforceres neuertheles ſalbe amerciat, at the Kingis pleaſure. In the quhilk place it is plaine, that *Quarentena viduarum*, conteines the ſpace of fourtie daies: during the quhilk ſpace, ane widdowe may tarie and remaine in the chiefe dwelling place of her husband, vntill her dowrie be aſſigned to hir, and in the meane time ſuld be ſuſtened vpon the proffites of the heritage. As it is likewaies written in *magna carta, anno. 9. Henr. 3. c. 7*, quhilk is conform to the laws of France, as writis *Ioan. Papon* in his arreiſtes. *lib. 15. Tit des dots. c. 7.* & *lib. 10. tit. ſubſtitutiones. c. 30. per authenticã præterea, C. vnde vir & vxor*, and in the Burrow lawes of this Realme, the ſecond, or thrid wife of ony burges, after the deceaſe of hir husband, may nocht remaine in the hous perteining to his aire gotten of ane vther wife, bot onelie fourtie dayes. *leg. burg. c. ſi burgenſis duas. 25.*

QVHATECVS, ane kinde or forme of bread, quhilk wee call ane ſage, or phage, from the greeke word φαγω, *comedo* to eate.

R

RACHETVM an French word, *Rachapt*, ane ranſon; in ſum buikes it is called *Rechatũ, tranſpoſitis lteris. Stat. 1, Rob. Br. c. 1. Stat. 2. Rob. Br. c. 7.* quhair it is called thieft-bote: & in ſum auld buikes *Rachatum* is called thieft-bote or redemptiõ takẽ for theuis, robbers, or vther malefactours.

RAPTVS, rape, rauiſhing or deforceing of weemen, quhilk is ane of the foure points or pleyes perteining to the Kings Crown & to nane vthers. *vid. placitum. vid. murthrum.* Raviſhing is an crime, quhairof ane woman accuſis ane man alledgand ſhe is oppreſſed, or defiled be him, againſt the Kinges peace. *lib. 4. c. raptus 9.* The quhilk complaint ſulde bee maid the ſame day, and night, in the quhilk the crime is committed, *quia lapſu diei hoc crimen præſcribitur. Quo. attach, Cap. De catero. 48: Statut. Wilh.*

c. Item

6 *Item Statuit.9.* In the lawes of England *Weſtm.11.c.34.* Rape is quhaire ane man raviſhis, or takis ane vther mans wife, widdow, or maiden, violentlie, and hes a doe with her againſt her will. And albeit ſhe afterward conſent, zit it is fellonie, quhilk is confirmed be *Cheſſ. in conſuetud. Burgund. Rubric.1.verb. Es droicts d'icellis. Nu.43.*

REIF, or robberie, is likewaies ane of the foure pointes of the Crown *lib.4.c.die lunæ.13.leg. malc. mack.c.4. aſſ.reg.Da.c 1.* Robberie is quhen an man lyis by the Kings hie waie, paſſing to mercat Townes, in wooddes, ditches, or onie vther ſecreit place, quhair people cummis furth by, and robbis, & ſpuilzies them, albeit he take away bot the valour of ane pennie, or leſſe, it is felonie: for the mala-pertnes of the deed, breaking of the Kings peace, and the danger in the quhilk ane man is of his life, cauſis the offence to be the greater, then gif the gear ſwa robbed or ſpuilzied had bin thiefteouſlie ſtollen, as is written in the lawes of England. *an. 23 He.8.c.1.* In the law of *Normandie.li.3.c.1.* Robbery is the taking of vther mens gear be force and violence: And the committers theirof in latine are called *raptores*, in French *voleurs*, or *Robeures*, & is different from theft quhilk is committed quietlie, and privilie, without violence. Maire-over reife is ane greater crime then thieft, becauſe reife is committed baith in the gudes, and in the perſon of the poſſeſſour theirof, and thieft is of the gudes and gear allanerlie *Cheſ. in conſuet. Burgund.rub.1.§.5.* Be the law of this Realme, the complaint of reife or robberie ſuld be maid be him quha is robbed, and damnified within the like time, as is foreſaid, of the raviſhing of wemen. *quo.attach.c.de cæter.48.lib.4.c.raptus.9.*

Difference betwixt reiſe & thieft.

RECOGNITION of landes is commonly vſed in the law, and practicque of this realme. *Sicut feudum dicitur aperire domino: ita terræ dicuntur cadere in commiſſum: ſicuti fit in hoc caſu ob culpam vaſſalli, & in Emphyteuſi.* or fewe landes, *ob non ſolutum canonem ſeu penſionem.lib.3.c.ex locato.11.* For the vaſſall tynes landes halden be him be ſeruice of warde, be reaſon of his awin fault, as ſalbe hereafter exponed: & the proprietar of few-lands, may tyne & for-fault the ſamin, for nonpaymēt of the zeirly dutie. *Cognoſcere* is to knaw & vnderſtād, *recognoſcere* is to knaw again or at the 2. time to vnderſtand. For generally, al ſuperiors, of quhō lands ar haldē in chief, firſt hes bin proprietars of the ſamin lands: quhilk lands being annalied, and ſauld be them heritably, to be halden of themſelues and their aires, ceaſis to be propertie to them: and becomes tennendrie immēdiatly halding of them and their aires. And gif it happens the vaſſall, or poſſeſſour, to quhom the landes are ſauld, to commit ane fault or crime, quhairby he tynis and fore-faultis the landes: the ſuperiour hes entreſſe and regreſſe to the propertie of the landes, and may recognoſce the ſamin, and as it were the ſecond time vindicate to himſelfe the propertie thereof. Swa the ſamin landes, quhilks were firſt propertie to him, and thereafter tennendrie, be reaſon of the alienation, nowe becomes againe propertie, and returnis to their firſt nature and condition, *Iure accreſcendi, ſeu potius conſolidatione proprietatis cum ſuperioritate, ob culpam vaſſalli*

ſalli. Recognition properly in the practicque of this realm, is quhen ony vaſſall, or free tennent, haldand his landes be ſeruice of warde and relieue, ſellis and annalies all and haill his landes with their pertinents, or the maiſt pairt thereof, without licence, conſent, or confirmation of his over-lorde. In the quhilk caiſe, all and haill his landes, alſweill nocht annalied, as annalied, and halden as ſaid is, may be recognoſced and reſaiſed in the ſuperioures handes, and baith the propertie and poſſeſſion theirof perteinis to him to be bruiked, or diſponed be him, at his pleaſure quhairof diuers and ſindrie practicques are extant in the Regiſter in the daies of King *Iames* the Fourt, of gud memorie. The ſuperiour vnderſtanding the landes to be wrangeouſlie annalied, as ſaid is: incontinent theirafter may vſe the recognition theirof, & without proces, or ordour of law, may tak ſaiſing of the ſamin, conforme to the auld practick of this realme: Becauſe the ſamin alienation is done to his diſhonour and contempt be his vaſſal, quha ſuld doe reuerence, and ſervice to him, & therefore without his conſent ſuld nocht do onie thing to diſſolue the league and band, quhilk is betuixt them. Mairouer the vaſſall, may nocht make the ſaid alienation, becauſe theirby, he may becum puir, and vnable to do to his ſuperiour ſik ſervice, as he ſuld do of the law. *Cuia. lib. 1. De feud.* And nocht withſtanding that the ſaiſing is takē be the ſuperiour; zit the vaſſall or poſſeſſour tinis nor forefaultis na waies the propertie of the ſaides landes, vntill zeire and daie be out-run: Swa that he doe diligence within fourtie daies after the ſaid recognition, and taking of the ſaiſing, to craue and aske fra his ſuperiour the ſaides landes to him to borgh; that is to repledge them, fitdand plege and caution, that he ſall be reddie to do to his ſuperiour anent the ſaides landes, all that equitie and lawe requiris. *Stat. Rob. 3. c. 2.* This kinde of recognition is conforme to the laws of the fewes, *quia feudū amittitur, ſi fidelis libellario nomine, amplius medietate in feudum dederit, aut pro pignore plus medietate obligauerit. §. 1. quib. mod. feudum amittitur, &. §. 1. de alienatione feudi. Et in iure Canonico. c. 2. & ibi. gl. extr. de feud Porro libellarius contractus dicitur, venditio, quæ fit ſcriptura interueniente, certa pretio, & certa penſione conſtituta, in annos ſingulos, vt poſt Feudiſtas ſcribet Cuia: in d. §. 1,* Recognition of landes is ſum times generallie taken monie waies. *Stat. Rob. 3. c. nota quod iſte. 21.* Firſt gif the vaſſal deceaſis the ſuperiour may recognoſce, and reteine all the landes halden of him vntill they be recouered fra him be the entreſſe of the righteous aire, and that be reaſon of none-entres

Libellarius contractus.

The cauſſes of recognition.

Sindrie formes of recognition.

2. After that the aire hes recouered the landes, furth of the handes of his ſuperiour: Neuertheles the ſuperiour may recognoſce, and reteine the ſamin, vntil ſecuritie be maid to him for payment of the relieue.

3. Gif the vaſſall is fugitiue for ſlaughter, and nocht law bidand, the ſuperiour may recognoſce the land halden of himſelfe, ſa lang as the felon or manſlayer happenis to liue. Conforme to the quhilk be the actes Parliamēt, the liferēt of the vaſſal, being zeir & daie at the horn perteins to the immediat ſuperiour, except he be rebell for treaſō, in the quhilk caſe

caſe, his life-rent, and all his lands, gudes and geare moveble, & inmoveable, perteinis to the King allanerlie, *Quia pœna debet eidem applicari adverſus quem committitur culpa.4.* Gif the vaſſall annalies his landes, or the maiſt part thereof, without licence, conſente, or confirmation of his Over-lord; The Overlord may recognoſce the ſame, as ſaid is. Bot in this caſe he is oblíſhed to let the landes to borgh, to his vaſſall; askand, and cravand the ſamin within the lauchfull ſpace of fourtie daies, after the recognition; and ſaiſing taken vntill it be tryed be the judge Ordinar, quhidder the cauſe of recognition be lauchfull or nocht quhilk being founde lauchfull, the judge ſuld counſell the King, and decerne ony vther ſuperiour, to hald his handes fra the landes, and let them to borgh to his vaſſall. And gif the cauſe be found iuſt and reaſonable; The judge ſuld decerne the propertie, and poſſeſſion of all and haill the landes, to perteine and remaine with the ſuperiour. 5. Quhen twa or mair parties contendis be way of deede and armes, for the poſſeſſion of landes, the ſuperiour thereof, may recognoſce and ſequeſtrat the ſamin, vntill it be tryed, quhilk of them is lauchfull poſſeſſour; and thereafter let the landes to borgh to him, quha is found to haue beſt richt of the poſſeſſion.

6 The ſuperiour may recognoſce and reteine lands halden of him in chiefe, for ſervice aucht to him, furth of the ſamin landes. Bot be the practicque of this realme: The ſervice aucht to be proven and liquidat, and thereafter the landes may be lauchfully compriſed.

7 Lands halden in fewferm, payand ane certaine zeirlie dewtie, *Nomine feudi firmæ*, may be recognoſced be the ſuperiour, for none paymēt of the few dewtie, & that twa maner of waies. The firſt, *ex proviſione legis, & natura contractus*. For the fewfermorer not payand his fewferm, for his ingratitude and vn-thankfulnes, tinis and fore-faltis his few-ferm, be the diſpoſition of the Law, quhilk as zit was not in practicque and vſe within this Realme.

The ſeconde is, *ex proviſione hominis, et conditionibus contractui inſertis*, quhilk is called ane clauſe irritant, as quhen ane clauſe and proviſſion is conteined in the infeftment, that if twa or maa termes run in ane of non-payment of the few-ferme duetie: then and that caiſe, the infeftment of few-ferme to be *irritum*, null and of nane availl, quhilk is conforme to the dayly practicque of this realm, *Quia pacta conventa legem contrahentibus præſcribunt. vid. l. 1. et Tit. C. de iure emphyteu.* Alwayes, be the act of parliament maid be *Ia.6.p.15.C.246*, Alienations of lands maid in few-ferm, are null for not payment of the fewe-dueties, be the ſpace of twa zeires, albeit na paction or proviſion bee maide there-anente in the infeftment.

Clauſe irritant.

RECORDVM, *Recordatio lib.1.c.contingit.31.* quhair-anent I finde difficultie. Alwayes *recorda ſummonitionis*, ſignifies the rehearſe, report, or teſtification of the execution of the ſummondes, brieve, or vther precept. *Ia.1.p.9.c.112.* quhilk execution, is now called *Indorſation*. Becauſe commounly it is written *in dorſo*, and vpon the backe of the ſummondes,

Indorſation.

leg.

leg. Foreſt. c. 25. and be the practick and daylie conſuetude of this Realme. zit obſerved, the execution of all brieues before inferiour judges, and of all criminall ſummondes before the three Eſtaites in Parliament, are verified in judgement, be the record of the executor theirof, and twa witnes at the leaſt. And in auld times the ſerjandes, or maires, maid the record of the ſummoundes, be word, or be writ, as they pleaſed: and verified the ſamin as ſaid is. And vntill the ſamin were done, the defender could nocht be compelled to make ane anſwer. *lib. 1. c. cum autem. 8. de iudic. c. 50.* And King *Dauid* the ſecond. 18. Febr. 1369. and of his reigne the fourtie zeire, ſtatute and ordaned anent the record of ſerjandes, or maires, that the ſummounds & record theirof, ſalbe put in wreit gif it pleaſe the ſerjand or mair, and he ſal reade the ſamin gif he can, in plaine court Vtherwaies, he may make the record be word: in the beſt forme he may, and gif he failzies, he may be helped and ſupplied be interrogatoures of the judge, concerning all and ſindrie clauſes or artickles, neceſſarlie vſed in the record of ane ſummondes, quhilk record the ſerjand or maire ſall prieue ſufficientlie be lauchfull witnes.' And the ſaid record being ſwa maid, the ſamin ſalbe receaved as lauchfull, and the contrair partie ſall nocht be heard, to object againſt the ſame, or to propone ony exception againſt the lauchfulnes theirof: And it ſall be leiſum to the ſchireffe, his depute, ſerjand, mair of fie, or onie vther depute ſerving in the office of ane ſerjand or mair, be the authoritie of the King, or of onie vther haueing power to make rehearſall of the ſummondes of the record or indorſation theirof, ſwa that they be qualified, and abill to doe the ſamin. Ia. 1. p. 9. c. 112.

ITEM, *recordum curiæ*, ſignifies the report, rehearſall, or minute of that quhilk is done in court or the interloquutour of the courte. *lib. 1. c. contingit. 31. Quo. attach. c. nullus ſectator. 20.* In the Normand law *li. 9. c. 31. vid. Sectator vid Varda*, quhilk in auld times was nocht written in buiks, bot inrolled togidder in paper. Like as the Kinges rolles are zit written in parchement in the Checker. Therfore they are called the rolment of court. As the Kinges rolles or *rotuli*, and the Clearke of Regiſtar *clericus rotulorum*, in latine properlie *volumina, quia, involuuntur, & in ſe quaſi retorquentur*. And it is to wit that actiones and pleyes, are aither directlie and from the beginning perſewed in ane court: or they cum fra an inferiour court, to ane ſuperiour *per tranſlationem. lib. 3. c. prætereà. 16.* as quhen ane pley or cauſe, is advocat from ane inferiour judge, to ane ſuperiour: quhilks advocations ar permitted and leſum to be maid to the Kinges courte allanerlie, be the auld law of this Realme, ſik as the juſtice courte, or ſchiref courte: and nowe be the practick vſed, and obſerved, to the Lords of Seſſion, and College of Iuſtice. And ſwa becauſe he quha alleged that wrang was done to him in the inferiour courte, raiſed the record, or interloquutor pronunced againſt him, & ſummound the judge to compeire before the Kinges Iuſtice, or ſchiref, to heare and ſee him decerned to haue done wrang. Therefore *ſola curia domini regis, dicitur habere*

Rollment of Courte.

here recordum. h.e. Poteſtatem cognoſcendi de recordis & interloquutorijs, quæ tranſferuntur ab inferiore curia ad ſuperiorem. Albeit ilk lauch full court, ſik as ane Barrone court, hes their awin recordes in all ſik actiones as are intended and decided before them, and nocht Advocate to ane ſuperiour judge.

REGRATERIS. *leg. burg. c regratarij. 70.* Quha byis onie merchandice or vther thing, and takis vnleſumlie greater price for the ſamin afterward, as is exponed be Ia. 2. p. 6. c. 23. 24. Ia. 6. p. 12. c. 143. In the civill law, regraterisare called *dardanarij, qui emunt, vt poſſint poſtea pluris vendere. l. annonam. 6. de var. & extraord. crim. A quodam Dardano, qui annonam flagellabat, Alciat. lib. 4. de verborum ſignificatione.* And ſwa regraterisare ſo called be reaſon of the augmentation and hichting of the prices. Foreſtallares are properlie they quha pre-occupies and byes merchandes before it cum to the mercat, or to the ſtall, or place quhaire it ſuld be ſauld, or the time of day ſtatute and ordaned theirto. Ia. 5. p. 4. c. 20. And mairover it is ſtatute that na man dwelland within burgh, or without the ſamin, ſall vpon the Faire daie, bye onie thing outwith the portes of the burgh. leg. burg. c. *nullus. 75.* And likewaies na perſon ſuld bye fiſh, fleſh, victuall, or onie vther thing before mercat daie, or the ringing of the bell in the ſteipell. *Stat. gild. c. 29.* And mairover foreſtallers are challenged, and accuſed becauſe they ſell their gudes, and payis nocht the Kinges cuſtome: that they ſell their gudes privilie vpon their awin fluire, that they are fore-byars of quheate, beare, aits, cattel, & are coperis and ſellers theirof, turnand the ſamin in merchandice. *leg. burg. c. de modo calumniandi foriſtallatores. 154.*

Dardanatij.

Foreſtallers

RELEVIVM ane French word, from the latine *relevare*, quhilk is to relieue, or take vp that quhilk is fallen, for it is given be the tennent or vaſſall being of perfite aige, after the expiring of the warde to his over lord, of quhome he haldes his landes be knicht ſervice, that is be warde and relieue, and be payment thereof he relievis, and as it were raiſis vp againe his landes, after that they were fallen downe in his ſuperioures hands, be reaſon of waird. *lib. 2 c. dicitur autem. 72. leg. Foreſt. c. ſi quis Comes 73. de iudic. 65.* And the proffites of the landes of the zeire foreſaid, after the ende of the waird, quhilk ſuld be given in name of relieve, are vnderſtande to be the retoured maill, of the ſaides landes, conforme to the new extent thereof. And therefore gif there be bot onelie wairde, and the aire enter before ane terme run thereafter, the King or vther ſuperiour ſuld haue na relieve, *quia hæredi ad ætatem perveinenti, et facta ei hæreditatis reſtitutione, quietus erit a releuia, ratione cuſtodiæ. lib. 2. c. tandem. 70.* Be the auld law and conſuetude of this Realme, the ſuperiour micht nocht bee compelled after the waird, to reſtore the landes to his vaſſall, vntill hee had bene firſt ſatiſfied for the relieve: becauſe he had libertie to reteine the landes, vntill the ſaid ſatisfaction were maid. *Stat. Rob. 3. c. nota quod iſte 21.* Or elſe it was leſum to him as he pleaſed, to poynd the ground therefore *quia dominus poteſt diſtringere tenentes ſuos pro ſuo relevio, et ſervitio de feudo*

ſuo

ſuo, ſibi debito, li. 2. c. Sunt quidam. 73. But now be the common practicque, the non-payment of the relieve, is na lauchfull excuſation to the ſuperiour, anent the receiuing of his vaſſall. But he will be compelled be preceptes of the Chancellarie, to receiue his tennente, or elſe he tynis the ſuperioritie, induring his life-time. And it is leaſum to him to poynde the grounde for payment of the relieue. *Quia relevium eſt debitum reale, & adhæret ſundo.* The beginning, and the firſte inſtitution of the warde and relieue, was in the time of *Malcolme* the ſeconde, called *Malcolme Mac-Kenneth*, quha gaue all and haill the landes of this realme to the inhabitantes thereof, and reſerued nathing to himſelfe in propertie, bot onlie his royall power and the Mute hill of *Scone*, quhair he ſuld hald court, and receiue homage, and fealtie of his vaſſalles: In recompenſation quhairof, all the Barronnes gaue vnto him, the warde, and relieve of the aire of ilk barronne, for his princelie ſuſtentation. In the Engliſh Lawes, read in *Magna Carta. Anno. 9. Hen. 3. cap. 2.* And the ſtatute of wards and relieves, maid be King *Edward* the Firſt. 18. zeir of reigne.

REPLEGIARE, To replege, that is, quhen ony man, be vertue of his awin juriſdiction, bringis back againe, or reducis to his awin court his awin man, fra ony vther mannis court, and leavis ane plege, or cautioner behinde him, for adminiſtration of juſtice. *vid. Culrach.* It is not leaſum to ony man to replege fra ony vther court ony perſon, bot his awin liegeman, or halding land of him, or remainand in his ſervice, as ane of his familie or conſanguinitie. *Stat. Alex. 2. Anno. 4. Statut. 2. Rob. Br. cap. 11. Aſſ. reg. Da. c. Statut. 37.*

RESEAN TISA, *Lib. 1. c. Eſſuieorum. 19.* Ane ſeikneſſe and infirmitie, quhairby ony man is heavelie vexed. *Eſſovium de Reſeantiſa, idem valet quod excuſatio, de malo lecti,* Bedde evill. *Cum quis morbo ita affligitur, vt ſit lecto affixus.* In French, *Mal de Lit. ſtat. 1. Rob. Br. c. 3.* In the Lawe of *Normandie. Lib. 9. c. 10. Eſſoinzie,* or excuſation of *Mal reſeant,* is quhen onie perſon lyand bed-faſt in his awin houſe, or ony vther place, is heavelie vexed with ſeikneſſe, that he may not travell without danger of his life. *In iure ciuili morbus Sonticus dicitur, qui cuiuſque rei agendæ, impedimento eſt, velut febris. Et legitimam excuſationem ac dilationem præbet. L. Quæſtum 50. ff. de vet Iudic. Aulus Gellius. Lib. 20. cap. 1. Appellat Morbum Sonticum, quemlibet morbum vehementiorem, vim graviter nocendi habentem.*

Eſſonium de Reſeantiſa.

Morbus Sonticus

RESPONDE, Or the buike of *Reſponde.* li. 6. par. 11. c. 73. It is maid and written be the directour of the Chancellarie. For quhen hee directis preceptes to the Schireffe, to giue ſaiſing of ony landes retoured before him to the Chancellarie. He makis ane memoriall of the dait of ilk precept, and dewtie of the lands, and commandis the Schireffe, to take ſecuritie for the ſamin, during the time of the warde, & non-entres, & of the relieve auchtand to the King, gif the lands be halden be ſervice of ward & relieve. Or of the doubling of the few-ferme, or of the blench

ferme, according to the halding of the landes. Quhilk buike zeirelie is presented to the Checker: And ilke Schireffe, and vther judges, givers of saisinges vpon preceptes, direct furth of the Kingis Chancellarie, are charged there-with in their comptes, compelled to make aunswere thereto, and paymente of all summes conteyned therein: for the quhilke cause, it is called *Responde*, quhilke is the first worde of ilke artickle of the said buik. Further in the end of the saidis preceptes, it is said, *præsentibus post proximum terminum minimè valituris*. And therefore, gif the obteiner of the precept furth of the Chancellarie, lye out and take nocht saising vpon the samin, quhill ane terme and maa be by-run after the dait thereof, he sulde come againe to the Chancellarie, and raise ane new precept, quhairin is augmented the by-run mailles of the lands, sen the dait of the first precept, and ane newe memoriall or *Responde*, is maide thereof.

RETOVR, quhom be it is maid, and quhy it is sa called. *vid. breve de morte antecessoris.*

REGRES, from *Regrediendo*, like as

REVERSION, *a Revertendo*: For like as the byar of landes, lettis them returne to the seller thereof, be the reversion giuen vnto him. Even swa be the regresse the superiour of landes wed-set, be his vassall, after the redemption thereof, suffers the first seller of the samin to come back againe to his awin place, anent the halding of them as he did before the said alienation. Swa reuersion & regresse are different, for reversion is giuen be him quha byis the lande, *Cum pacto de retro-vendendo*, to the annalier thereof. In Frenche it is called, *Ius reacheptus* or *reachept*. And ane regresse is giuen bee the superiour of landes, to the annalier thereof, quhairby hee promisis to receiue againe him, or his aires to be his vassalles, as they were of before, quhen it fall happen onye of them to redeeme the saidis landes. 27. November 1567. *George Halyburtan*, contrare the Laird of *Haltoun*. And gif onye man annalies landes vnder reversion, to be halden of him and his aires, ane regresse is not necessar: For they being afterward redeemed, he quha first annalied the, recouers the property thereof, without onye new saising, & the same returnis to him, & is consolidat, with the superioritie quhilk he reserued to him & his aires, the time of the alienation. But gif ane man annalies landes to ane vther, vnder reversion to bee halden of the superiour, and the byar thereof obteine infeftmente, and saising halden of him: The annalier thereby is denuded of the propertie, and alswa is na langer vassall to his former superioure, and can na wayes recouer his former estait, but bee redemption of the landes, conforme to the reversion graunted be him quha boucht them. And alswa bee ane regresse, giuen to him be the superiour: In the quhilke caise it is necessare to him, quha firste annalied the landes, and thereafter redeemed them to tacke newe saisinge, To the effecte, the propertie quhilke was firste annalied, may returne to the seller. And that he may halde the samin landes in chiefe

Reachept.

Landes annalied to be halden of the annalier and his aires.

Landes annalied to be halden of the superiour.

chiefe of his superiour, and his aires, as he did before the alienation. And it is generally to be obserued, that quhaire ane regresse is required, ane new saising is necessare. In aulde times, the reversion was conteined in the chartour, as is manifest be diuers chartours, zit extant in the register, giuen in the time of King *David* the second: conteinand the tenour of the reversion after the clause, *Teneñ. et habeñ.* and vthers aulde chartours in the forme after following.

Ane forme of chartour contenand ane Reversion.

OMNIBVS *hoc scriptum visuris vel audituris. I. dominus de A. Salutem in domino. Noveritis me concessisse, impignorasse, & ad immobile vadium dimisisse, & hoc præsenti scripto meo confirmasse, nobili viro V. de F. Omnes terras meas de A. cum pertinentijs, in baronia de C. infrá vicecomitatum de B. proviginti Marcis vsualis monetæ Scotiæ, mihi per prædictum V. tempore confectionis præsentiũ, ad opus meum valde necessarium, gratanter mutuatis, & in vsus meos cõversis. Teneñ. et habeñ. præfato V. hæredibus suis et assignatis a me hæredibus meis et assignatis in feodo et hæreditate, cum omnibus cõmoditatibus, libertatibus, & asiamentis ac iustis pertinẽtijs quibuscunq; adeo liberè, et quietè, plenariè, et honorificè, benè, & in pace: sicut ego vel prædicessores mei, præfatas terras cum pertinentijs, liberius aut quietius tenui, aut possedi, tenuerunt, aut possiderunt, aliquo tempore præterito. Et semper quousque ego prædictus I. hæredes mei, vel mei assignati viginti marcas præfatæ monetæ, prædicto V. hæredibus suis, vel suis assignatis, in vno die inter solis ortum et occasum eiusdem, apud* ABIRDENE *in Ecclesia parochiali eiusdem; super magnum altare, simul & semel, persolvero, vel persolverint sine fraude. Fructibus, firmis, vel quibuscunque alijs cõmoditatibus seu emolumentis medio tempore per prædictum V. hæredes suos vel assignatos, perceptis vel percipiendis, levatis vel levandis, indicta summa viginti marcarum, aut eius solutione, nullatenus computandis. Quia dedi, concessi, & assignaui præfato V. hæredibus suis, et assignatis, omnes præfatas firmas, fructus, et alias commoditates quascunque, & emolumenta de dictis terris cum pertinentijs, provenieñ toto tempore, quo prædictæ viginti Marcæ (vt præmittitur) non fuerint persolutæ: ex mea libera donatione, & pura voluntate, pro suis consilijs, auxilijs, & gratitudinibus, multipliciter mihi factis & impensis. In quibus-quidem terris cum pertineñ. præfato V. tradidi saisinam, & possessionem corporalem sibi, hæredibus suis, & assignatis, iuxta tenorem præsentis scripti remansuram. Ego verò prædictus. I. hæredes mei & assignati, totas terras prædictas de A. cum pertineñ, præfato, V. hæredibus suis & assignatis, iuxta vim, tenorem & effectum, præsentis scripti; In omnibus & per omnia, contra omnes mortales varrantizabimus, acquietabimus, & defendemus. In cuius rei testimonium huic præsenti scripto meo, sigillum meum apposui, & propter maiorem rei evidentiam, sigillum Andreæ Giffard, tunc aldermanni de* ABIRDENE, *præsentibus apponi procuravi. Apud* ABIRDENE *23.* Augustj *anno Domini 1419. Testibus Laurentio de Abernethie, Domino de Rothemay, Domino Willhelmo de Lundoris vicario de Abirkerdour, cum multis alijs ad præmissa specialiter vocatis.* But nowe the Chartour is giuen be the sellar of the landes, and the reversion be the byar thereof, seuerally, sealed and subscrived be them, and the byar keepis the chartour, and the annalier keeps the reversion. Quhilk forme appeares to haue the be-

ginning in the dayes of King *Iames* the thrid, quha in his actes of parliament.p.5.20. November, cap.27. callis the bying and ſelling of landes, be chartour and ſaiſing, and taking againe of reverſions, ane new invention, and for the mair ſecuritie, ordainis all reverſions to bee regiſtrate, *vid.Sterlingus.vid.Vadium.*

S

SCACCARIVM, the *Checker*, in Frenche *Eſchequier*, the place quhair the Kingis rentes and patrimonie, allweill propertie, as caſualities, is inbrocht, compted and receiued, and the profites of all landes fallen in the Kingis handes be reaſon of warde. *Lib.2.cap. Si verò dominus.46.* Some callis it the ſoveraigne and ſupreame court, in the quhilk all cauſis and actiones are decided in the ſecond inſtance, ſpeciallie in the cuntrie of Normandie: For it is written in the lawe of Normandie. *Lib.15.c.1.in fine.* That *Philippus pulcher*, did inſtitute twa parliamentes in Paris, and twa Checkers in Roan. *Paulus Æmilius* writes, *Scaccarium* to be as it were, *Statarium, quòd homines ibi in Iure ſiſtantur, vel quòd ſit Stataria & perennis curia, cum cætera curiæ eſſent indictiva, nec loco, nec tempore ſtatæ.* As writes *Budæus in Annotationibus in Pandectas.* Be reaſon as ſaid is the Checker was ane certaine ſtable courte, and nocht deambulatoure, or runnand fra time to time, or fra ane place to ane vther: As the Seſſion of this realme was before King *Iames* the Fifth. *Qui inſtituit Statariam curiam, cum antèà eſſet indictiva:* Be reaſon it did ſitte thriſe in the zeire, quhair and quhen it pleaſed the Kinge. Vthers thinkis that *Scaccarium* is ſo called, *à ſimilitudine ludi Scacchorum*: that is, the playe of the Cheſſe: becauſe mony perſones conveenis in the Checker to pleye their cauſes, contrare vthers, as gif they were fechtand in ane arrayed battell, quhilke is the forme and ordour of the ſaide playe. *Ius Normand.Lib.15. cap.1.in fine.* Vthers alleadgis, that it cummis fra ane aulde Saxon worde, *Scata*, as writis *D.Thomas Smith:* quhilke ſignifies treaſure, taxation, or impoſte, quhairof, & of vther caſualities, compt, & reckoning is maide in the Checker. Quhilke compte (like as all vther comptes) is maide in ſik ſorte and forme, that *tabulæ accepti*, that is, the charge, and *tabulæ expenſi*, that is the diſcharge, ar equall, and *ſic æquè*, becauſe the compter hes giuen furth na mair, nor he hes receiued: and alſwa hes giuen als meikle furth as hee hes receiued. Quhilk is called *pariare rationes*, and this compter is called *Pariator*, *l.vlt.§.idem queſiit de condict.indeb.l.penult.§.conductore de iure immunitat.* Or els the charge & diſcharge are inequall, in ſik maner, that the compter hes received mair nor he hes expended, and ſa at the fute of the compt, he is found reſtand awand certain ſums vp-taken be him, and not given furth, quhilk is *reliquare rationes*, & this compter is called *reliquator*, & is obliſhed *reliqua inferre* to pay the reſt auchtand be him, *l.creditor.102.§.Valerius de ſolutionibus.* Or thridly, *tabulæ expenſi ſuperãt tabulas accepti*, quhen the compter hes giuen furth

Scata,

pariare rationes Pariator.

Reliquare rationes.

furth nor he hes receiued, and ſwa is ſuperexpended, quhilk is called προσδαπανᾶν, *h.e. ſupererogare, vel ſuperare rationes ſeu tabulas accepti.* And the compter quha makes ſik ane compt, is called προσδαπανητης, *ſupererogator.* Quhilk word is vſed in the Evangel of *S. Luk. c. 10. 35.* quhair the *Samaritane* haveand pittie and compaſſion vpon the man, quha betuixt *Ieruſalem* and *Ieriche* was ſpuilzied, and wounded be thieues and robbers, did commit him to be cured be the hoſte of his ludging, and gaue him twa pennies, and promiſed to recompenſe, quhatſumever he ſpended mair. *vid. Balliuus.* *Superare rationes.*

SACREBORGH, or rather *Sickerborgh, ſecurus plegius*, ane ſiker ſure, ſufficient cautioner. *quo. attach. in prin. Ia. 2. p. 14. c. 75* Is ane maner of borgh, or caution, quhilk ane findis to ane vther, & ſpeciallie in actions, or pleyes; for quhen onie man hes action to an vther for thieft or ſlaughter, quhairof he offeres to accuſe him iudiciallie it behuiffes the perſewar, to knit and obliſh him, in the handes of ane officiar, or before ane judge competent: and find ſure caution, and ſicker borgh, that he ſal perſew in forme of Law. *Mod. ten. cur. c. 44. lib. 4. c. 1. Stat. Alex. c. 9. c. ſi quis conqueſtus. 10.* In the civill law, the accuſer in criminall cauſes *cogitur inſcribere nomen. l. 3. ff. de accuſat.* And conforme to the practick and law of this Realme, the perſewer quhan he raiſis the letters, findes caution, to reporte the ſame in againe, dewlie execute and indorſat. And alſo to perſew at ane certaine daie, conforme to the tenour of the letters. And moreover quhen he accuſes ane vther criminallie, before the juſtice and his deputes, he ſuld ſweare the dittay to be trew, quhairvpon he accuſis the defender, bot the Kings advocat, accuſand criminallie, ony of the Kings lieges, is na waies obliſhed to ſweare in this caſe.

SAK, *lib. 1. c. 3.* In ſum auld buikes it is called *placitum et emenda de tranſgreſſione hominum in curia noſtra.* In the *Britton* lawes of King *Edward* it is written *Sacha, eſt ſi quilibet aliquem nominatim de aliquo calumniatus fuerit, et ille negauerit, foris factura probationis vel negationis (ſi euenerit) ſua erit.* Quhilk may be called the vnlaw or amerciament paied be him quha denies that thing, quhilk is proven againſt him to be trewe, or affirmis that thing quhairof the contrar is of veritie. *Sacha.*

SAISINA, ane French word ſaiſing or poſſeſſion, *vid Diſſaſina.*

SCHAFFA *ſagittarum*, ane ſcheife of arrowes, conteining twentie foure. Vtherwaies called *garba.* Ane ſcheife of Irone, containes ſexteene gades, ane ſcheife of ſteile conteines fourteene gades. *leg. nauium*, or ſchip lawes. *c. 2.* *Garba.*

SCHIREFF, ane principall ruler, or judge of ane certaine part of the Realm. In latine *præſes prouinciæ.* *Aluredus* in the confederatiõ maid with *Guntherus* king of *Denmark*, divided England in *Satrapias, centurias, et decurias*, and called *Satrapiam* ane ſchire, That is ane cutting or ſection, as is written in the auld *Britton* lawes *verb. centuria*: like as we ſay as zit, ſcheire cornes, or ſcheire graſe, or an paire of ſchires, quhair with claith is cutted. And ſwa ane ſcheire, or ſchiref-dome, is an part of land, cutted and ſepe- *Schira.*

rate be certaine meithes & marches from the reſt, within the quhilk the ſchireffe, as judge, dois juſtice, and pronuncis decreites and domes, to all the inhabitantes theirof. Quhilk is called *comitatus, prouincia, vel vicecomitatus. lib. 3. c. tali autem. 18. lib. 4. c. ſi quis. 28. c. ſi quis in manibus.* 42. ſchireffis in this Realme hes their offices given to them be the King in heritage, contrair to the act of Parliamente, Iam. 2. par. 11. Cap. 44. Quhilk is the cauſe of greate enormities and wranges, be reaſon the Schireffes being inſeft heretablie, thinkis themſelues ſure of their office, and regairdis nocht the execution theirof. And to the effect that gude men may make conſcience of their calling, (quhairof they ſall make compt and rekoning to God, of all evill committed, and of al gude omitted) And that vthers may be inſtructed of their dewtie, and ather mooved to doe the ſamin: or els be puniſhed for neglecting theirof: I haue collected and gathered furth of the lawes of this Realme, ane ſchort rehearſall, and ſumme, of al thinges pertening to the office of ane Schireffe: And firſt of perſones, ſik as ſchireffes, deputes, Clerks, and ſerjands. Secondlie, of Schireffe courtes. Thridlie, of his office, and juriſdiction, quhilk generallie conſiſtis, in obſervation and execution of all the Kinges lawes. And particularlie, in particular actiones and pleyes, perteining to his juriſdiction and court. Quhairof ſum are civill, vthers are criminall, & laſt of the paines and puniſhment of malitious, or negligent ſchireffes.

Deputes & Clarkes

Firſt ſchireffes ſuld be in al & ſindrie partes throwout the haill realme and ſpeciallie in the *North* partes, and *Weſt* partes of the ſamin, ſik as the *North Iles*, and *South Iles*, for the acquieting of the peopill be juſtice: and in *Roſſe* and *Caithnes*. Ia. 4. par. 6. Cap. 59. Cap. 61. And to the effect they may the better exerce their office, and doe juſtice to everie perſon, as effeiris, they ſuld be gud, ſufficient, and qualified men, as is ſtatute be King *Dauid. 2, 6. Nouemb.* 1357. In ilk ſchireffdome they ſuld doe juſtice to the Kinges lieges, hauld courtes in lauchfull time, and continew the ſamin according to law, ſwa that Actiones and proces, begun and intented before them, ſall na waies be delayed throw their negligence, fraud, or malice. *Stat. Rob. 3. ex libro Sconenſi*, and ſuld doe juſtice and ful law, alſweil to puire as to rich, vnder al paine and charge that may follow. Ia. 1. p. 2. c. 45 and briefelie all ſchireffes and vther ordinar Iudges, their deputes and Clerkes, ſuld knaw and vnderſtand the lawes of this Realme, and acts of Parliament, quhairof the execution is committed to their charge, quhilk they ſuld cauſe be execute without delay. Ia. 6. p. 12. c. 124, and ſuld not onelie be qualified in judgement and knawledge, to miniſter juſtice, bot alſo ſuld haue ſufficientlie of their awin, in lands, gudes & gear, quhairin they may be puniſhed, being found culpabil in execution of their office.

The Schireffes fie.

Ia. 1. p. 1. c. 6.

The ſchireff ſuld haue for his fee of the eſcheittes, ten pundes. *Leg. Mal. Mak. c. 1.* Quhilk fee ſuld be payed to him of the extractes and eſcheittes of his awin courte, and na vtherwiſe: but na fee ſulde be allowed to him, vntill firſt he make compt to the Checker of his intromiſſion. *Aſſ. reg.*

Da.

Da. ex libro Sconenſi. And vnder pretence of his fee, he ſulde take nathing, nor vſe onie extorſion vpon them, quha cummis to faires, parliament, or generall Councelles. *Iam. 3. par. 5. c. 33.* Nor ſulde take na diſtreſſe of gudes and geare of little price and quantitie, cummand to the faires or mercattes. Alwayes hee ſulde haue the beſt Oxe, or Cowe, or vnridden horſe, quhilkis are ſtalled, or brought to be ſaulde. Iames 2. parliam. 13. cap. 60.

Al Schireffs ſal haue gud and ſufficient deputes, or baillies, for quhom they ſall anſwere. And gif ony perſone be infefte with ſik office in aulde time, and is vn-able. or vn-apt to vſe and exerce the ſamin in his awin proper perſone: he ſall preſent to the King, ane ſufficient depute, to exerce the ſaid office in his place, for quhom he ſalbe anſwerable, as is ſtatute be King *Da. 2. 6. Novemb. 1357.* quhilk is confirmed be *Iam. 1. p. 1. c. 6.* And generallie it is trew, that ilk ſchireff, and vther ordinar judge, ſalbe halden to anſwere for their deputes, as themſelues. *Iam. 3. p. 5. c. 26.* And therefore all Schireffes, and judges, for their awin better ſecuritie, ſulde make their deputes ane or maa, gude and wiſe ſubſtantious men, of beſt fame, knawledge, vnderſtanding, & experience, and leaſt ſuſpect within the Schiref-dome, and ſulde cauſe them be ſworne the time of their admiſſion, that they ſall leillely & truely vſe their office: and gif they continue them fraan zeir to ane vther: they ſall cauſe them be zeirly ſworn, for adminiſtratiõ of juſtice, at the head court after *Michaelmes. 1. 5. p. 6 c. 73* Schiref deputes and their qualitie.

Schireff-Clerkes ſuld be honeſt famous men, quha be themſelues and their ſufficient deputes, ſalbe alwaies reſident, within the head burgh of the ſchire, for regiſtration of letters of horning, and better execution of their office. I. 6. p, 6. c. 75. Be the auld law of this realm, the ſchireff Clerk was in-put, and out-put be the King: and had na league nor bande with the ſchireff, but was bound & obliſhed to the king allanerly, and was ſuſteined in his hienes houſe, as occaſion & time required, & did al things concerning his office, with the counſell and adviſe of the King. *Aſſ. reg. Da. in libr. Sconenſi.* Schireffes. Clerkes.

The ſchireff Clerk receivis for his fee of ilk amerciament or vnlaw, twa ſhillings. *leg. Mal. Mak. c. 1.* gif he ſal happen to be be found culpable in execution of his office, & ſpecially anent the regiſtration of letters of horning: he ſuld be puniſched of all his gudes moueable, to be applied to the kings vſe, and the ſchireff ſall pay for the fault of his Clerk, ane hundreth poundes to the King, and all damnage and intereſſe of the partie grieued. Iam. 6. p. 11, c. 71.

Schireffes ſuld ſend their deputes and Clerkes, ane or maa zeirlie, at the firſt day of November, to the Lordes of the Seſſion, to be examined and admitted be them; vnder ſik paines, as the Lordes ſall pleaſe to modifie, in-caſe of failzie, to be employed to our Soveraine Lordes vſe. Ia. 6. p. 11. c. 80. Ia. 6. p. 12. c. 124. Deputes & Clerkes. Serjand.

The Schireffis ſerjand, or officiar, ſuld haue ane horne, and ane reide wand of three quarters of ane yairde lang at the leaſt, and gif hee haue nocht the ſamin, he ſuld be challenged therefore, be the Schireffe

in his head courtes. Ia.1.p.6.c.99. Quhairof the ane and the vther is neceſſar to him in the execution of his office, for with the ſound or blaſt of the horne, he denuncis the diſobedient rebelles. And alſo perſewis malefactoures, quha are fugitiue fra the Law, and raiſes the inhabitantes of the cuntrie, to concur and aſſiſt in taking and apprehending of them. And with the wand, he relaxis them quha returnis to the Kingis obedience fra the horne, and receiuis them to the kingis peace, As I haue ſaid alredy in an vther place. Likewaies all ſchireſs ſtewarts, & baillies ſal caus the maires, ſerjands and officiars, haue ane ſignet conteinand the 1. letter of their name, quhairwith all letters, and precepts extant be them, & indorſations theirof, ſalbe marked and ſtamped. Ia.5.p.6.c.74. The ſchireſs ſerjand ſuld haue for his fee of ilk amerciament or vnlaw of court, an col pindach, or threttie pennies. *leg. Malc. Mack. c.1.*

Schireffs courte.

It is leſum and neceſſar to the ſchireffe and his deputes, to halde ſchireffe courtes, for execution of his office. Quhilks courts ilk Schireffe be the auld law of this Realme, is obliſhed to halde after the ſpace of ilk fourtie daies. *Lib.4.cap.Statutum.19.aſſ.reg.Da.c.ad ſummonitiones.19.* And now all Schireffes, Stewartes, and Baillies ſuld hald three heade courtes in the zeire, be themſelves in proper perſone. Except they haue juſt and lauchfull excuſes of ſeiknes, or of the Kingis ſervice. And all barrones and free halders, quha aw ſuit and preſence in the ſaides courtes, ſall compeire perſonallie. And the abſentes ſuld be amerciat, and all they quha aw bot ſuit allanerlie, ſall ſend their ſuitoures, honeſt and qualified men, able to decide onie actioun or cauſe. And all they quha cumis to the Courte, ſall remaine vntill the ſamin be ended. And ſall paſſe vpon inqueſtes and aſſiſes, and aſſiſt the Schireffe doing their office, and ſervice, conforme to their infeftmentes. Ia.5.p.6.c.71. The Schireffe in his courte ſall keipe and obſerue ſik forme and ordour of proces, as is vſed before the Lordes of Councell, and Seſſion. And he ſuld ſet his court peremptourly vpon fiftene dayes, and all preceptes direct be him to ſummond and warne the parties, ſuld be execute vpon fiftene dayes. *Iam.1.par.9.cap.110. Iam.5.par.6.cap.72.* And gif the indwellers within the ſchireff-dom and royaltie thereof, compeirs nocht in ſufficient number, or ſendis nocht their attournayes, to paſſe vpon ſeruing of in-queiſts or retoures, ſwa that thereby the ſchireff-court is weake, and nocht weill ſtuffed. The ſchireff may warne the gentlemen of the regalitie, to compeir and enforce his court, but prejudice of their regalitie. *Iam.1.par.9.cap.130.* Item, all Baronnes, Knightes, free-halders, and ſtewardes of Biſchoppes, of Abbottes, and of Erles, ſuld be preſent at the ſchireff-court, vnder the paine of the Kingis vn-lawe. *Lib.4.c.ſtatutum 19. Aſſ.reg.Da.c.ad ſummonitiones 19.* All the ſaidis perſones and vthers, quha coms to the courte, ſulde come in ſober and quiet maner, with als monie perſones, as they daylye ſuſteine in houſe-halde and familie: and beande come to their ludgeing, they ſulde weare na weapones, but their knife, and gif ony of them dreadis bodily harme of ane vther: the ſchireffe

Suite and preſence.

ſulde

ſuld grant him law-burrowes. Ia. 2. p. 14. c. 83, & it is leaſum to the ſchiref to charge all perſones to cum to his court in ſober maner, & gif they refuſe to skaill their gadderinges, and convocation, he may ſtay or continue the court: & the perſones diſobedient, ſal be puniſhed be warding of their perſones be the ſpace of ane zeire: and be payment of the expenſis and damnage ſuſteined be the partie, throw delaie of juſtice. Ia. 3. p. 14. c. 104, And albeit all friehalders & vthers perſones ſuld cum to court in quiet maner, as ſaid is. Nevertheles, it is leſum to the ſchireffe, ſtewart bailly, & vthers the Kinges officiars, to ride with greater number, for execution of juſtice, and furth ſetting of the Kingis authoritie. Ia. 5. p. 4. c. 27. The vnlaw of the Schireffe in his court, ſuld noc exceede the ſumme of 16. ſchillinges, & to his clerk 2. ſchillinges, & to his ſerjand an colpindach, or 30. pennies, *leg. Malc. Mack. c. 2.* The vnlaw of courte.

The juriſdiction of the Schireffe conſiſtis and ſtandis generallie in diverſe and ſindrie pointes. Bot firſt of all it is to wit, that the ſchireffe his depute, & ſerjand, hes na juriſdiction or power outwith the boundes of his awin ſchirefdome, to ſummund or attache ony perſon, or to poynd or take ane diſtres of onie mans gudes and geare: for they ſuld make faith that they ſall faithfullie ſerue the King, within their awin ſchireffedom, and ſal nocht trouble or moleſt onie perſon within the ſamin, againſt law and reaſon. *aſſ. reg. Da. c. nullus. 13. quo. attach. c. nullus. 57.* Swa it is manifeſt, that the Schireff hes onlie juriſdiction, within his awin Schireffedome. Within the quhilk, he and his deputes ſuld cauſe the lawes & acts of Parliament to be publiſhed, red, and proclaimed in his courtes, and to be keiped and obſerved be all our Soveraine Lordes lieges, alſweil in the courtes of al Prelates, Erles. Barrones, and vthers haveand power to hald court, as in his awin ſchireffe court, & ſuld giue to them the copie of the lawes, that na man pretend juſtlie ignorance theirof. *ſtat. 2. Rob. c. Robertus 28.* And ſiklike in all burrowes of this realm, the ſchireff ſall cauſe 12. leil and honeſt men of the burgh, ſweare and make faith, that they ſall cauſe the Kingis lawes be keiped and obſerved. *Stat. Alex. c. Item in omni. 25.* & to the effect the ſamin may be the better done be him, the actes of Parliament being regiſtrat, ſuld be delivered be the Clerk of the Regiſter to him: quhilk he ſall cauſe be proclaimed oppenlie, in cheife place of the ſchireffdome, and ſuld give copies of them to prelates, barrones, & burrows within his ſchireffdome vpō the expenſes of the asker, & ſuld cauſe all indwellars within his ſchireffdome baith to land & to burgh, to keipe & obſerve the ſaides lawes & ſtatutes, vnder the paine of deprivation of his office. Ia. 1. p. 3, c. 67. Ia. 2. p, 14. c. 90. And likewaies to the effect the ſchireff ſuld ſee juſtice lauchfullie done and miniſtred: he ſuld be preſēt in al courts of Biſhoppes, Abbots, Earls, Barrones, & friehalders to quhō it is not leaſum to hald their courtes, except the ſchireff or his deputes be preſent, or ſummoned to that effect. *li. 4. c. die luna. 14. Stat. Alex. aſſiſa. 10 aſſ. reg. Da. c. 1.* And ſiklike na barrone may hald court of battell, water, or iron, except the ſchiref, or his deputes be preſent to ſee juſtice done. *Stat.*

Iuriſdiction. The Schireffe hes na juriſdiction out with his awin territorie.

The Schireffe ſuld cauſe the lawes be proclaimed and obſerved.

The Schireffe ſuld be preſent in all courtes.

Alex.

Alex. c. preterea. 28. vid. Ruellum. vid, mahamium, And mairover the ſchireff and all vther judges within the ſchireffedome, ſuld repaire and cum to the King, the firſt night he cummis within the ſchireffdome, to anſwer to all complaintes maid againſt him, anent the nocht keiping and obſervation of the lawes: & ſal nocht departe, nor paſſe away without licence asked and obteined, vnder the paine and vnlaw of aucht kye, *aſſ. reg. Da. c ſtatutum. 20. quo. attach. c. Statutum. 80.* And alſo ſall nocht paſſe awaie fra the King, except he haue with him the Actes of Parliament, and his inſtructiones given to him in writ. *aſſ. reg. Da. ex libro Sconenſi.* Eaſt concerning the execution and obſervation of the lawes, the ſchireffe, nor na vther officiar of the law, ſall onie waies obey, or execute onie command direct to them be the King, vnder the greate ſeale, privie ſeale, or ſignet, repugnant or contrarious to law or reaſſon. Bot gif onie ſik precept be preſented to them; they ſal receiue the ſamin reverentlie, write vpon the back thereof, and remit the ſamin againe. *Rob. 2. 1372.* And of his reigne, the firſt zeire.

The Schireffe ſuld repair to the King.

He ſuld not execute or obey vnlauchfull cummandes.

The ſchireffe ſuld nocht onlie make the publication of the laws, and cauſe the ſamin to be keeped & obſerved: Bot alſo ſuld concur and aſſiſt with vthers to do the ſamin, ſik as the juſtice generale, chalmerlane, & auditours of our Soveraine Lordes Checker.

The Schireffe office in the juſtice aire.

The ſchireffe at command of the juſtice generall, ſuld ſummound certaine perſones to burgh and to land, to giue vp dittay, to the juſtice Clearkes, and ſuld be preſente in proper perſon at the juſtice aire with the verification of the ſaides ſummounds. He ſuld ſuſteine & pay the expenſes of the juſtice clearkes, in the time of the taking vp of the dittay. Quhilk ſuld be allowed to him in his comptes, he ſuld (conforme to the juſtice precept direct to him) ſummond all Biſhops, Abbotes, Erles, Barrones, Freehalders, & al vthers quha aucht preſence in the juſtice aire, & are immediate vaſſalls to the K. to compeir in the juſtice court, to fortifie & aſſiſt the juſtice. Likewaies he ſuld ſummound all perſones indyted of new, & of aulde, al pledges obliſhed for the entrie of onie man in the air, all perſones quha will perſew, or defende, in the ſaide court, to compeire doe, and fulfill that quhilke accordis of the Lawe. Hee ſulde be preſente in the courte, with ſufficient teſtimonie of the execution of the ſaide ſummoundes. And ſuld make proviſione for the juſtice and his Clerkes, quhilke ſulde be allowed to him in his firſt compt in the Checker. He ſuld take vp ſik ſummes of money and gif neede beis poynd therefore, as the juſtice modifies to be payed be them, quha are amerciat, or cummis in will. *vid. Iter.*

Mairover gif there be onie perſones, quhome the Crowner may nocht, nor dare nocht arreiſt: He ſall deliver their names to the ſchireffe, quha ſal be becum borgh and cautioner to enter and preſent them in the juſtice aire. Or ſall paſſe, or ſend ſufficient number of men, to fortifie the Crowner, making the arreiſtmente, and bringing the perſoun arreiſted to the Schireffe to be keeped be him. Quhilk gif the Schireffe failzies

failzies to doe, he sal pay ten pund to the King. Iames. 3. par. 14. Cap. 99. Because the schireffe suld keipe the persones arreisted be the Crowner, & enter them to the justice aire, gif there be na Castell perteining to the King within the schireffdome, quhairin they may be keeped Iames. 5. p. 3. Cap. 9.

Mairover, the schireffe or his deputes suld passe, or send with the Crowner, and visie the gudes, perteining to all persones convict in the justice aire, and deliver to the Crowner sa meikle thereof, as he suld haue be the law, and inbring the remanent to the Thesaurar. Iames. 3. par. 14. Cap. 102. And the last day of the aire, the schireff suld thoill ane assise anent the vsing, and execution of his office. Iames. 3. par. 14. Cap. 102. Finallie the schireffe or his deputes be their Clerke, suld inbring to the thesaurar, all extractes of the justice aire, and summes of money conteined thereintill: quhilk gif hee failzies to do, na allowance salbe granted to him in the Checker of his comptes, albeit hee haue the Kingis letter in the contrare, granted to him in his favours. *Ass. reg. Da. ex libro Sconensi.*

Quhen the chalmerlaine is to hald his aire, within onie burgh, the schireff be vertew of the Chalmerlains precept direct to him, suld attach and arreist without delaie, vnder sure pledges and cautioners, all them quhais names the Provest and baillies of the Burgh sall give to him in writ; To compeire before the chalmerlaine, or his deputes, day, place & time of the air, to answer to sik things as sal be laid to their charge. At the quhilk court, and aire, the schireff and his deputes suld be present, bringand with them the said precept and verification, or testimonie of the execution thereof. *Iter. camer. c. 2.* Chalmerlaine aire.

All schireffs suld be examined zeirelie in ilk checker, howe they haue keiped the acts of Parliament, and how they haue punished the transgressours thereof. For in the Checker, the schiref, or ane sufficient depute for him, haue and sufficient power; suld compeire and sweare there anent, in *animam eius*: Vnder the paine of ten pound, and tinsall of his office at the Kings will. *Ass. reg. Da. ex libro Sconensi.* In the quhilk Checker, the schireffe suld make compt, and full paymente, *eq.* with the Rolles, sa far as he lies intrometted, or micht intromet with the Kingis propertie or casualities, sik as escheits and wardes, vnder the paine of warding of his persone. Iames. 5. par. 7. Cap. 96. Iames. 6. par. 11. Cap. 74. And suld bring with him, his court buikes, with the compt of escheits, and vnlawes, intrometted with be him, togidder with the registers of hornings registrate be him in his buikes, and of all saisinges. Iames. 6. par. 12. Cap. 124. And suld find cautioners, burges men within *Edinburgh*, acted in the buikes of Councell, that he sall zeirelie make compt in the Checker, and payment of all thinges intrometted with be him. Ia. 6. p. 11. c. 80. Iames. 6. par. 11. Cap. 230. And gif he be found restand at the fute of his compt onie summes of silver, to the King or his Thesaurar: it is leasum to the Thesaurar, as he pleasis, to poynd the Schireffe and his Checker.

deputes

deputes, or the partie to quhome saising is given, for the saides summes, conforme to the buike of *respondé*. Ia.6.p.11.c.73.

The Schireffs jurisdiction in civil maters.

The jurisdiction and office of the schireff, consistis alswa in particular civill actions and pleyes, and decision theirof in his Courte, and likewaies in execution of decreits given be civil judges, sik as the Lordes of Councell, and session. The schireff and his deputes is judge competente to their pleyes and actiones after following. That is, the pley or mute of barrones betuixt barron and barron. The mute of ane reasonable Terce perteining to wemen as lauchfull wives, be reason of the decease of their husbandes, complaintes tuiching the breaking of appoyntments, aggreances, and end of pleyes made in court, and not keiped. *lib.1.c.4.c.contingit.31.lib.2.c.dos.19.* Mutes and pleyes of natiues, that is of bondes, & servandes fugitiue fra their awin maisters: making of Homage: Receaving of relieues: alswa actiones and pleyes of debt auchtand be an to ane vther, may be followed before the schireff, with vther actiones of wrang & vnlaw. *lib.1.c.4.lib.2.c.consequenter.13.* The brieue of richt, & free tenements, suld be determined before the schireff, in the second instance, quhair as complaint is maid, that the court of barrones hes done wrang thereanent, be reason wranges done in the barron court, war remeded in the schiref court, be the auld law of this Realme. *lib.1.c.placita.6.lib.3.c solent.17.c.ad vicecomites.19.* Bot be the law and practick now vsed & observed, the Lordes of Councell and session are onelie judges competent baith in the first instance, and second, to al actiones and matters tuiching fee & heritage. Siklike all pleyes tuiching Meithes & Marches of lands, betuixt nighbour and nighbour, suld be decided and declared be ane assise before the schireff, *lib.2.c.vlt.* Conforme to the quhilk all actiones of molestation, in troublance of the possession of propertie, & commontie suld be decided be the schiref of the schire, or vther ordinar judg, quhair the landes lyes, be the determination of ane assise, of the best and worthiest of the cuntrie, least suspect, and that best knawis the veritie. Ia.6.p.11.c.42. The schireff is judge competent to the remooving of tennents fra lands, conforme to the varning maid against them to that effect, *Mar.p.6.c.39.* The schireff is judge to the brieve of inquest, quhair be ane desiris to be served, & retoured narrest & lauchfull aire to his predicessour. *lib.1.c.Generalia.25.quo attach.c. De brevibus.31.Ia.1.p.9.c.127.* Quhilk brieue suld be served in plaine court, be the maist worthie of the schireffdome, summound and called vpon the premonition of 15. dayes. *Stat. Rob.3.c.1.Vid.breue de morte antecessoris.* And na commission for serving of the said brieue, or vthers suld be granted to onie person, in prejudice of the schireff, Stewart, or baillie, vntill he be first warned to heare and see the samin given, or else to alleadge ane reasonable cause, quhy the samin suld nocht be granted. Iames.5.par.6.Cap.82. And incase ony sik brieue sal happen to be served and retoured before onie judge, commissionar; the precept of saising suld bee direct furth of the Chancellarie, to the Schireffe, as is before said, *verbo.breue de morte antecessoris.* For generallie

Molestationes and cognitions

Removing

Brieve of inqueist.

Commissions.

nerallie all preceptes of ſaiſing furth of the Chancellarie vpon retoures ſuld be direct to the Schireffe, and vther judges ordinar, with the clauſe, *Capiendo ſecuritatem*, Iam. 6. p. 12. c. 124. And all ſaiſinges paſſing vpon ſik precepts ſuld be given be them, their deputes and Clerkes. Mar. p. 6. c. 34. Quhairof they ſuld write the day & zeir of the giving of ilk ſaiſing; and bring the ſamin, togidder with all vther ſaiſinges, given be private Notars zeirly, to the checker. Ia. 4. p. 6. c. 89. Ma. p. 6. c. 47. I. 6. p. 11. c. 65. Saiſinges vpon precepts of the Chancellarie.

Sik-like actiones of ejection and ſpuilzie, perteinis to the Schireffe, and his juriſdiction. And therefore, gif ony man is wrangeouſlie ejected furth of his land, or violentlie ſpuilzied of his guds and geare: The Schireffe ſuld tak cognition there-anent. And the ejection or ſpuilzie beand proven, ſall cauſe him quha is ejected or ſpuilzed, to bee reſtored to his awin landes, gudes, and geare, with the profites thereof, and damnage & skaith ſuſteined be the partie. *Aſſ. reg. Da. c. ſtat. 31.* Speciallie gif the perſones quha ar ejected and ſpuilzied be religious men, clerks, widdowes, aged perſones, or ſik vthers, quha be the law, ar excuſed fra ſingular battell. *Aſſ. reg. Da. c. ſtat. 38. ſtat. Alex. c. 5. ſtat. Ro. Br. 3. c. 6.* Ejectiones & ſpuilzie

And in ejectiones, quhen ony man is ejected furth of his landes, fee, or heritage; the Schireffe at commande of the Lordes of Seſſion, ſall furth-with gar reſtore the ground, without prejudice of ony partie, and recognoſce the landes in the Kings handes, vntill they be lowſed be the King. And in the meane time, inquiſition is taken be the Schireffe, quha was lauchfull poſſeſſour of the landes: And the ſamin beand retoured to the King, the landes ar letten to borghe to the ſaid perſon. I. 2. p. 14. c. 62. And generallie, the Schireffe ſuld arreiſt, and put in the Kingis ward, all maiſterfull and wrangeous occupiers of vther mennis landes, and ſall cauſe the ground to be maid voyde of them and their gudes. Ia. 2. p. 14. c. 78. Ejectiones.

Concerning ſpuilzie, the Schireffe ſuld compell ſpuilziers, and their receipters (the ſpuilzie being proven) to reſtore their gudes ſpuilzied, and charge them to anſwere therefore, as law will. And in-caſe they diſobey, he ſuld denunce them rebelles, and put them to the Kingis horne. Quhairin, gif he be negligent or partiall, he ſalbe puniſhed as the principall ſpuilzier. Iam. 2. parlia. 5. cap. 10. The like reſtitution ſuld be maid be the Lordes of regalities, quhilk gif they doe not; the Schireffe ſuld cauſe the ſamin be done within the regalitie. Iam. 2. p. 5. c. 11. Laſt of all, actiones of recent ſpuilzie may be perſewed before the Lords, or the Schireffe, within xv. daies nixt after the committing of the ſpuilzie. Iam. 4. p. 6. c. 65. Spuilzie

Execution not onely of decreetes of ejection and ſpuilzie, as ſaid is, bot alſo of all vther decreetes perteinis to the Schireffe, be reaſon of his office & juriſdiction. For ane decreet beand given againſt ony man; letters ar direct to the Schireff of the Schire, ſteward, or Baillies to burgh, or to land, chargeing them to put the ſaid decreete to execution: quhilk ſuld be done be ilk ane of them, within their awin juriſdiction, and ſuld Execution of decreetes

receiue for their office & fee xij.d.for ilk li.recovered or cõteined in the decreet,to be takẽ of him,againſt quhom the decreit is givẽ. And gif the Schireffe or vther officiar failzies to do the ſame,he ſal tine his office for iij. zeirs,gif itbe heretable:& perpetually,gif he hes it in life-rent, or for ane certaine time;& ſal pay the principal ſũme recovered,to the partie, with the coaſts & expenſes ſuſteined be him.I.4.p.3.c.30.Ia.4.p.6.c.67. Likewaies,al ſentences &decreets given be the Lords of the ſeſſion,ſuld be execut be the Schireffe of the Schire,or his deputes,quhair the party dwellis, againſt quhom the decreet is given.Or els be Heraulds,purſevantes,or Maiſers: And for execution thereof, nane ſall take mair nor is preſcrived be the act of Parliament foreſaid;except be liberalitie of the partie,vnder the paine of deprivation of their office. Ia.5.p.5.c.58.

Poynding For the better and mair reddie execution of decreetes: It is leaſum to the ſchireff,to poynd the guds & gear perteining to the debtour, be the brieue of diſtres: quhilk brieue perteinis to the Schireffis juriſdictiõ. *lib. 1.c.Placitum.7.* Quha ſuld cauſe execut the forme of poynding,& taking of diſtres. *Quoniam attach.c.de breuibus,31.* Bot the ſchireff or vther judge may not poynd ony man,or tak ane diſtres, bot within his awin juriſdiction allanerly;And gif he dois in the contrair, it is plaine riefe or ſpuilzie· *ſtat.Rob·3.c.Item ſtat.13.* And it is not leaſum to the Schireffe,or ony vther judge,within his awin juriſdiction, to poynd oxen,horſe,or vther guds perteining to the pleuch,or that labouris the groũd,the time of the labouring thereof;gif there be vther ſtreinzieable gudes,quhilk may be poynded. And gif ony man wil tak ane poynd within the Schireffdom, he ſall cum to the Schireffe or his deputes, and deſire him to concurre and aſſiſt with him thereintill. And thereafter the Schireffe, or his deputes, ſall paſſe with him to the houſe of the debtour, fra quhome the poynd ſuld be taken. And gif the debtour confeſſis the debt,and prievis payment thereof to bee maid be him, or bee vtheris in his name: Na poynd ſuld be taken. And gif ony is taken, the ſamin ſuld be delivered againe;vtherwaies,gif he grantis the debt,and proovis it not payed: The Schireff ſuld tak the poynd,& cauſe the creditour be payed. And gif the debtour denyis the debt, the poynd ſal not be taken fra him,except it be manifeſt,that the debt is auchtand to the creditour;becauſe na diſtres or poynd ſuld be takẽ bot for debt cõfeſſed or proven. *li.4.c.Si quis namos.30* And gif the debtor hes nã moveable gudes,or hes not ſameikle within the Schire,as is equivalent to the debt recovered againſt him. And gif it happenis that he have ſome moveable gudes within ane vther Schireffdome; The Schireff of the vther Schire, within the quhilk the ſaids movable guds lyis,ſall cauſe the ſame to be poynded & cõpriſed,& the creditor to be payed. And failzieing of moveable guds,the ſchireff ſal cauſe the lands & immoveable guds perteining to the debtour,to be cõpriſed conforme to the acte of parliament, & cauſe the ſamin to be ſauld and annalied,to the availe of the debet,and the creditour. Ia.2.p.5.c.36.

Criminall cauſes Diverſe and ſindrie criminal Actiones, perteinis and belangis to the Schireff-

Schireffe, and his juriſdiction, quhairof ſome ar capitall; vthers ar pecu- perteining to the ſchi-
niall, as atter followis. And firſt generallie the Schireffe may follow and reffe.
perſew al treſpaſſoures, in the Kings name, and cauſe his Maires and ſer-
jandes arreiſt them; albeit na partie perſewer compeir, or aſſiſt. Ia. 1. p. 13
c. 139. Like as the Theſaurar, and Advocat, may perſew ſlauchter, and v-
theris crimes, albeit the parties keipe ſilence, or vther-waies privatelie a-
gree. Ia. 6. p. 11. c. 76. And ſwa quhen ony complaint is maid, be ony per-
ſon to the juſtice Generall, or to the Schireffe, or to ony vther officiar of
law within burgh, or without the ſamin. The Schireffe, or vther judge,
ſall ſummond baith the parties. And gif the deede be done be Chaud-
melle, the partie ſall perſew, as effeiris of the law. Bot gif it be done be
fore-thoucht-fellonie, the committer thereof, ſalbe accuſed of the brea-
king of the Kings peace: He ſall ſatiſfie the partie, and be impriſoned in
the Kingis priſon. Becauſe his life and gudes ar in the Kingis will. I. 1. p.
3. c. 51. And gif ony treſpaſſor be fugitiue for ony crime, the ſchireff ſuld
perſew & follow him: And ilk Gentle-man, not follow and the ſchowte,
or out-horne, ſal pay xl. s. And ilk zeaman xx. s. to the king. I. 1. p. 6. c. 98.

The Schireffe, Crowner, or Proveſt within Burgh, ſuld cauſe buric Murther
him quha is murthered. *Leg. Mal. Mak. c. 1.*

The Schireffe ſuld puniſh Witches, Sorcerers, Necromancers, and Witchcraft
them quha ſeekis helpe, reſponſe, or conſultation of them, vnto the
death, alſweill the abuſer, as the ſeeker of the reſponſe, or conſultation.
Mar. p. 8. c. 78.

The Schireffe, and vther ordinar judges, ſuld ſearch, take, and appre- Meſſe
hend, all them quha not being lauchfullie admitted, dois miniſter the
Sacramentes, ſayis Meſſe, or hearis the ſamin, to be brocht to the King,
to be puniſhed conforme to the Law. Ia. 6. p. 1. c. 5.

The Schireffe ſuld take ſtrait inquiſition, of them quha ſtrikis falſe, of, Falſe cuin-
forbidden cuinzie, and ſuld cauſe them to be brocht to the King, to be zie
puniſhed to the death. Ia. 3. p. 3. c. 18.

Slauchter

The Schireff beand certified of ſlauchter, committed within his Schi-
reffedome, and royaltie thereof, he ſall incontinent raiſe and follow the
ſlayer, with ſounde of horne, and convocation of the Kingis lieges. And
gif he beis apprehended with reid hand, juſtice ſall be done within that
Sunne. And gif he be taken and apprehended without read hand, Hee
ſalbe put in priſon, & law ſalbe done vpon him, within 40. daies. And gif
he eſcaipis, or flyes furth of the Schireffedome, the Schireffe ſall certifie
the nixt Schireffe thereof; quha ſall perſew and follow the ſlayer in ma-
ner foreſaid. And conſequentlie, ilk Schireffe ſall certifie vther, vntil the
treſpaſſour be put furth of the Realme, or els brocht to juſtice: The like
certification ſuld be maid be the Schireffe, to the Lord of regalitie, quha
ſuld perſew the malefactoures, as the Schireffe ſuld do. Iam. 1. p. 6. ca. 89.
Iam. 3. par. 5. c. 35. Iam. 4. par. 3. c. 28. Quhen the committer of ſlauchter,
cummis to the Girth: The Schireffe ſuld advertiſe the Maiſter of the
Girthe, and cauſe the ſlayer bee put to the knawledge of ane Aſſiſe,

quhidder the ſlauchter committed be him, was done vpon ſuddaintie, or be fore-thocht-fellonie. And gif it be found ſuddaintie, he ſalbe reſtored to the libertie of the Girth, and Sanctuarie. And gif it be founde fore-thoucht-fellonie, he ſalbe puniſhed to the death. Ia.3.p.5.c.35. Ia. 5.p.4.c.22.

Law-borrowes. The Schireffe ſuld not only puniſh committers of ſlauchter, as ſaid is; bot alſo ſuld after his power, ſtay, and ſtop the committing thereof: And therefore, quhen ony man hes doubt of his life, either be ony deede, menacing, or violent preſumption; & verifies the ſamin be his aith, or vther probation. And for that cauſe, askis law-ſovertie to be given to him be the Schireffe, that he ſalbe harmeles & skaithles of him, of quhom he dreadis the bodielie harme. The ſchireffe ſuld grant his petitiō; & gif he refuſis the ſame; he ſal pay 40. pund to the King, & aſſyith the partie. I.1. p.9.c.129. Ia.2.p.6.c.13. Ia.2.p.14.c.83. And gif the law-borrowes happenis to be broken, the paine thereof, ſuld be payed to the Schireffe, for the quhilk he ſalbe comptable in the Checker. Ia.3.p.1.c.5.

Thieft It is leaſum to the Schireffe and his deputes, to perſew ony perſone for thieft; Albeit na partie concur and informe him there-anent. *Quoniam attach.c.vbi aliquis.25.* As likewaies, he is judge competent to thieft and ſlauchter, quhen ony perſon compeiris and inſiſtis with him, in the perſute. Bot gif the ſaids crimes be followed be way of dittay: the juſtice generall is judge thereto. *lib.1.c.2.* And quhen ony thiefe is condemned before the Schireffe, & execute for thieft: Al the moveable guds, quhilk perteine to him, ſuld juſtlie perteine to the Schireffe. *lib.2.c. Forisfactum 55. de Iudic.c. Preterea.148* Bot gif ony man findis in ony town, his awin ſilver ſtollen fra him; It is not leaſum to him to intromet-there-with: Bot he ſuld put and leaue the ſamin, in the keiping and cuſtodie of honeſt men of the towne, and ſall declare the ſamin to the Schireffe, quha ſall compell the Proveſt or ruler of the town, & three men with him, to mak faith, that he knawis na-thing of that thieft; And thereafter the compleiner proovand the ſilver to be his awin, ſuld receiue the ſamin to be vſed be him, as his awin proper geare. *Lib.4.c.Si quis.21.ſtat.Alex.c.Aſſiſa.20.* All thieues ſuld be puniſhed to the death. And it is not leaſum to the Schireffe, to ſell ony thiefe, or to fine with him for thieft done, or to be done, vnder the paine of life and gudes. Ia.1.p.13.c.135.

Sorners Al Sorners, taken and apprehended, ſuld be delivered to the Schireff, that juſtice micht be done vpon them, as thieues and rievers. Ia:2.p.11. cap.45. Ia.3.p.10.ca.77. The Schireffe ſuld arreiſt and challenge, all ſorners, quha lyis and ſojournis vpon the Kings lieges, and compel them to aſſyith the King, and the partie compleinande. And gif na partie compleinis, he ſall inquire at the head courte, anent ſik treſpaſſoures. And as he ony findis, ſuld puniſh them. I.1.p.1.c.7. And mairover, the Schireffe and all vther officiares, alſweill to Burgh, as to lande, ſall puniſh ſorners, ouer-lyars, maiſterfull Beggars, ſuilles, bairdes, vagabounde, put them in warde, and baniſh them the Cuntrie. Iam.2.Parli.6.Cap.22.

And

And all oppreſſoures, ſtrang vagaboundes, beggars wandring athort the realme, vpon pretence that they ar Schipbroken, or baniſhed for ſlaughter, or vther odious crimes; And diſſimulat thieues, and abuſers, called Ægyptians. Ia.6.p.12.c.124.

Sick-like the Schireffe ſuld arreiſt all idle-men, and put them in ſure firmance, vntill it be knawin, quhairon they liue, and take caution of them; that the inhabitantes of the cuntrie, ſal be harmeleſſe and skaithleſſe of them; And that they ſall get maiſters, or paſſe to craftes within fourtie daies; quhairin gif they failzie; the Schireffe ſuld inpriſon them, vntill they be puniſhed at the Kingis will. Ia.1.p.3.c.66. Mair-over, the Schireffe ſuld compell idle-men, to paſſe and labour for wages within Schippes, maid and prepared for fiſhing, of great and ſmall fiſh, vnder the paine of baniſhment furth of the Schireffedome; quhairin gif the Schireffe failzies, he ſall pay twentie pound to the King, in the Checker zeirlie. Ia.4.p.4.c.49. Idle-men.

All they quha ar ſuffered to beg a landwart, ſuld haue ane certaine takin given to them be the Schireffe. Iam.1.p.1.c.25. Vnder the paine of burning on the cheeke, and baniſhment off the cuntrie of the beggars: and of ane vnlaw of fiftie ſhillinges to the King, to be payed be the Schireffe, in-caſe he failzie in keiping of the premiſſes. Ia.1.p.2.c.42. And mair-over, the Schireffe, Proveſt, and Baillies within Burrowes of royaltie & regalitie, ſall pay ane mark for ilk beggar that beis found beggand: except he be cruiked, ſeek, or weake. Ia.4.p.6.c.70. Beggars

And mair-over, the Schireffe ſuld ſuffer na beggar to beg within ony Parochin, bot onelie them quha ar borne within the ſamin. For ilk beggar ſuld be ſuſteined within his awin Parochin, and ſuld haue the marke thereof. Iam.5.parlia.4.cap.21. And for puniſhment of ſtrange idle beggars; all Schireffes and vther judges ſuld make priſones, ſtockes, and irons within Burghes, throw-faire-townes, and at all Paroch Kirkes. Ia.6.p.12.c.147. And ſuld puniſh beggars, conforme to the act maid bee King Iames the Sext. Ia.6.p.6.c.74.

To the juriſdiction of the Schireffe, perteinis to cognoſce and decide anent ſtrife, ſpuilzies, ſtraikes, wounds, and breaking of the Kings peace. *Lib.1.c.2.* And the Schireffe ſuld take inquiſition anent the breaking of the Kings protection, and compel the breakers thereof to pay ten punds to the King, and aſſyith the partie. I.1.p.11.c.134. Tuilzies and breakers of the Kingis peace.

The Schireffe ſuld deſtroy veſchelles, creilles, & vther ingines, quhilk ſtoppis Smoltes to pas to the ſea. I.2.p.14.c.87. I.3.p.5.c.37. He ſuld cauſe the meaſure and quantitie of the cruves & zaires to be keiped in waters, quhair the ſea flowis and ebbis: To the effect the frie of the fiſh, may aſcend and deſcend; and ſuld likewaies giue vp dittay to the juſtice, in his aire, vpon ſlayers of Salmond in forbidden time. *ſtat. Alex. cap. hæc eſt Aſſiſa. 27. Leg. Burg. c. hæc eſt Aſſiſa 113. Stat. Rob. 2. Br. cap. Item ordinatum. 12.* The Schireff ſuld deſtroy, caſt downe, and hald down, all cruves within his bounds, vnder the paine of xx. pund to be payed to the King. Cruves & fiſhing.

Ia.4.pa.2.c.15.Mar.p.8.c.68. For the quhilk cauſe,ſpeciall commiſſion is granted to him.Ia.6.p.6.c.89.Ia.6.p.7.c. 111. He ſuld execute the actes maid anent herring and quhite-fiſh, and vp-take the eſcheit of the contraveeners thereof,and make compt in the Checker,Ia.6.p.6.c.86.

Huntingof the Wolfe

The Schireffes ſuld hunte and ſlay the Woolfe, and her Quhelpes, three times in the zeir; and all the indwellers of the Schire,ſuld riſe with him,vnder the paine of ane Wedder.Ia.2.p.14.c.88.

Archerie

The Schireffe ſuld cauſe bow-markes to be maid for Archerie, in ilk paroch,vnder the paine of fourtie ſhillinges,to be vp-taken be him to the Kingis vſe.Ia.4.p.3.c.32.

Schutting with fire-warke.

The Schireffe ſuld puniſh all them quha ſchuttis at Deare, Rae, or, vther wilde beaſtes, or wilde-fowles, with Culveringes, Piſtolettes, or Gunnes.Ma.p.4.c.9. Nocht onely the Schireffe,bot all judges Ordinar, ſuld accuſe at particular diettes, all them quha ſchuttis with Culvering, Croce-bow,at Da,Rae,Hart,Hinde,Cunning,Dowe,Herron,or fowle of riefe.Ia 6.p.1.c.16.p.7.c.123.

Foreſtallers

The Schireffe, and all vther officiares, baith to burgh and to land,at ilk Courte, ſall inquire quhat perſones byis victuall, and haldis it to ane dearth; And declare their names to the King,that they may be puniſhed as ockerers,and the victuall eſcheit.Iam.2.p.6,c.23.

Mair-over, the Schireffe ſuld eſcheit all gudes quhilkis ar foreſtalled, coft,or arled be foreſtallers, and in-bring the twa parte thereof to the Kingis vſe; And the thrid part to him ſelfe.Ia.5.p.4.c.20.

Cattell.

And ſik-like the Schireffe ſuld puniſh, bee confiſcation of all their moveable gudes,all them quha tranſportis Nolt, Scheipe,or vther Cattel furth of the realme.Ia.6:p.7.c.124.Ia.6.p.12.c.149.

Policie.

The Schireffe ſuld puniſh deſtroyers of planting of wooddes, Forreſtes,orchardes,broome,breakers of Dow-cattes,cunningaires,parkes, ſtankes, zairdes, ſlayers of Haires,makers of Mure-burne in for-bidden time,and vther deſtroyers of haining and policie.Ia.6.p.6.c.84.And like waies,ſuld in-bring to the Kingis vſe, the paines of them quha plantis nocht wooddes,makis not hedges and haining.Ia.5.p.4.c.9.

Fute-ball

The vn-law of fourtie ſhilling, ſuld be taken vp be the Schireffe, fra players at the fute-ball. In-caſe the Lord of the land,pretermit to do the ſamin.Ia.1.p.1.c.17.

Caution found be the wardatar and vtheris.

Quhen ony landes fallis,be reaſon of warde in the Kingis handes, or of ony vther ſuperiour; Or quhen to Burgh or to land,lands ar given in con-junctfee,or life-rent: The Schireffe or the Baillies,ſal cauſe the wardatar,finde caution not to deſtroy the bigginges, or vther policie: And that he ſall leaue the ſamin, als gud as hee fand them; And that he ſall ſuſteine the aire,not havand ſufficient blench,or few-ferme landes.Ia.4.p.3.c.25. And gif the Schireffe,or vther judge be negligent,in requiring caution, being required thereto,be the heretoure, or his friendes: Hee ſall refound and pay to the heretour of the landes, at his perfite age, all damnage and ſkaith ſuſteined throw his negligence.Ia.5.p.4.c.14.

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The Schireffe ſuld take inquiſition of them quha wearis Claith of gold, ſilver, velvet, or ſilkes, contrair the actes of parliament, and ſend them to the King, to be puniſhed. Ia.3.p.6.c.45. Ia.6.p.7.c.113. Claithing

All they quha vſis exceſſe or ſuperfluitie in banquettes, contrair the tenour of the acte of Parliament, ſuld be puniſhed be the Schireffe, and vther judges, within the Royaltie and regalitie. Ia.6.p.7.c.118. And ſiklike, the Schireffe ſuld ſend to the Theſaurar, the names of all perſons quha breakis and contraveenis the act of Parliament, maid anent the ordering of ilk mannis houſe, and quantitie of meat and diſhes, preſcrived to ilk man of all eſtaites, that they may be accuſed and puniſhed therefore. Mar.par.5.c.26. The Proueſt and Baillies within Burgh, ſuld cauſe Hoſtellares take reaſonable price for ane mannis dinner and ſupper, effeirand to the prices of victualles. And ſuld alſo ſet downe reaſonable prices vpon ilk mannis wark, and ſuld deliver the ſamin to the Schireffe, that he may cauſe the ſamin price be keiped to Landwart. Mar.p.5.c.22. Mair-over, the Schireffe ſuld puniſh the Barronne, quha examinis, nor prices nocht the wark-man-ſhip of ilk craft, within his Barronnie, with the paine and vn-law of ten poundes. Ia.1.p.7.c.102. Banquets. Craftſmen.

The Schireffe ſuld ſend or bring all Notars, quha ar Temporall men, within the boundes of his office, and preſent them to the Lordes of Councell, to be examined be them, quhidder or nocht they be worthie or qualified for the office of the Notarie. Mar.p.5.c.24. And the Schireffe with ſik perſones, as the King pleaſis to adjoyne to him, ſuld call all Notars before him and examine them. Ia.5.p.6.c.76.

The Schireffe ſuld vp-take and inbring al taxationes, and mak compt and payment thereof. Ia.4.p.2.c.9. Taxation.

The Schireffe, with the Barronne, or Lord of the lande, ſuld ſee and provide, that ilk man be armed according to his eſtaite and rente: And ſall cauſe weapon-ſchawinges to bee maid zeirlie, after the Octaues of *Paſche. Stat. Ro.2. Br.c. Ordinatum.27.* Or at the leaſt four times in the zeir, Ia.1.p.2.c.44. I.4.p.3.c.31. Or vpon Thurſday in the Whitſunday oulk. Ia.4.p.6,c.75. Or twiſe in the zeir throw all the Realme, in the Moneths of Iunij and October, or ony vther day, as ſall pleaſe the Schireffe, ſteward, or Baillie. Ia.5.p.6.c.85. Weapon-ſchawing

The Schireff ſuld execut the act of Parliament, anent the keiping or threſhing out of victualles, and cauſe the ſamin to bee keiped & obeyed, vnder the paine of tinſell of his office, in-during the Kingis will. Iam.2. par.9.cap.37. Victual

The Schireffe and Chalmerlaine, ſall cauſe all mettes and meaſures to be keiped vſed & obſerved, conforme to the tenour of the acts of Parliament, as they will anſwere to our Soveraine Lord. Ia.3.p.4.c.22. Mettes and meaſures

The Schireffe and his deputes ſuld eſcheitte and intromet with all horſe perteining to Earles, Lordes, Barronnes, and vthers, halden at harde meate, langer nor the time preſcrived in the act of Parliament. Of the quhilk eſcheit, the ane halfe perteinis to the King, and the vther halfe Horſe.

to the Schireffe. Ia. 6. p. 11. c. 56.

Eſcheittes

The Schireffe at command and direction of the Theſaurar, ſuld take vp, and intromet with the eſcheit guds and geare perteining to rebelles. Ia. 6. p. 6. c. 75.

Excommunicate perſones.

Divers and ſindrie perſons ar diſobedient to the Kingis Lawes, baith civill and criminal, and alſo refuſis to obey and fullfill lauchful decreites given and pronunced againſt them, be judges Eccleſiaſticall, civill and criminall: For the quhilk cauſe, ſome ar excommunicat and curſed, vthers ar denunced rebelles, & put to the horne. And therefore the Schireffe (to quhome perteinis the execution of the Kingis Lawes and decreetes) ſuld tak and apprehend all curſed & excommunicate perſones, at the deſire of the Biſhoppe, or his Official, and put them in priſon, vntil they ſatisfie God, and the Kirk. *Stat. 2. Rob. Br. cap. Rex tali. 31.* Speciallie them quha hes remained vnder the cenſure of Excommunication, be the ſpace of fourtie daies. *Quoniam attach. c. Rex tali. 76. ſtat. Rob. 3. c. Item 7.* To the quhilk effect, letters of caption being direct to the Schireffe, he ſuld execute the ſamin againſt all curſed perſones. And gif they be fugitiue, their gudes and landes (gif they ony haue) ſalbe compriſed, for ſatisfaction of the partie. And gif they haue nane, they ſalbe denunced rebelles. Ia. 2. p. 5. c. 12.

Rebelles.

All Schireffes, Stewards, Baillies, and vther officiares, baith to burgh and to Lande, ſuld ſearch, ſeeke, and apprehend all rebelles be and at the horne, and bring them to our Soveraine Lordis juſtice, to be juſtified, conforme to their demerites; Vnder the paine of tinſell of their office, for three zeires, gif it be heretable; And in all time cumming, gif it be Temporall. And mair-over, to be accuſed for their negligence in the juſtice aires, or at particular diettes, as it ſall pleaſe the King. Ia. 5. p. 7. c. 97. Mair-over, the Schireffe, and all the ſaidis judges, alſweill within regalitie, as royaltie, ſuld ſearch, ſeeke, follow, perſew, apprehend, and commit to warde, and preſent to juſtice, all declared traitoures and rebelles, contemnandlie remainand at the horne vn-relaxed; and ſuld do juſtice vpon them, gif they haue commiſſion to that effect. And gif the ſaidis rebelles be fugitiue, the Schireffe and vther judges foreſaidis, ſuld make denuntiation thereof to the Schireffes, and judges Ordinar, of the foure halfes about; and require them to vſe the like diligence, vnder the paine to the quhilk the traitoures and rebelles ar ſubject, or hes incurred. Iam. 6. p. 12. c. 124. And furder, the Schireffe ſuld incurre and fortifie vther officiares, to take vp the eſcheit of rebelles, and ſuld make convocation of the Kingis lieges to that effect. Ia. 6. p. 6. c. 74.

Ratification of letters of horning.

Mair-over, all letters of horning, with the indorſation thereof, ſuld bee regiſtrat be the Schireffis Clerke, within fifteene daies, after the denuntiation; And being marked and ſubſcrived be him, ſuld be delivered to the partie. And ſik-like, all relaxationes ſuld be regiſtrat in the Schireffis buikes, within fifteene daies after the publication thereof. Iam. 6. pa. 6. cap. 75. Iam. 6. par. 8. cap. 142. And ilk Schireffe ſuld cauſe proclaime

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the names of the rebelles, at the mercat croce of the head burgh, vpon mercat daies, preceeding the three head courtes, & affix ane Catalogue conteinand their names vpon the mercat croce, and in the Tolbuith: And ſend ane vther rol thereof to the Theſaurar, conteinand the names and cauſes, for the quhilk they were denunced. Ia.6.p.6.c.74.

Laſt of all, tó the effect, that they quha ar in *Bona fide*, be nocht deceived in bying of landes or gudes, fra them quha ar interdited or inhibit, For eſchewing of ſik fraud, the Schireff, *Tanquam bonus Prætor*, ſuld cauſe all inhibitiones and interdictiones, with the executiones thereof, to be regiſtrat in his buikes, be his Clerke, within fourtie daies, after the publication of the ſamin. Ia.6.p.7.c.118. Of inhibitiones and interdictiones.

QVHAT Is the juriſdiction & office of ane Schireff, may be eaſelie knawin be the lawes and conſtitutiones abone written; quhairof ſindrie conteinis certaine ſpeciall paines to be enjoyned to him, for his malice or negligence. And now, I thoucht gud to declare, certaine generall penalties, preſcrived be the lawes of this realme. And firſt, the Chancellar, Iuſtice, Chalmerlaine, Schireffe, nor nane of their deputes or ſubſtitutes, ſall ſuſteine or mainteine pleyes, quarrelles, or actiones; nor ſall not take landes, or vther budde or rewarde, from the partie, for hinderance or delay of juſtice. And gif ony ſall happen to be convict thereof; he ſall be puniſhed at the Kingis will, and ſall tine and forefalt his office, induring his life-time. *Stat.2.Rob.Br.c.Dominus Rex.22.* Of the paines and puniſhmēt of Schireffs

Secondlie, in the time of King David the Second: Becauſe the haill communitie and inhabitantes of the Realme, compleined heavelie vpon Schireffes, Maires, Serjandes, and vtheris the Kingis miniſters of the Law: It is ſtatute and ordained, that incontinent before the ende of the Parliament: The juſtice Generall, with the Chalmerlaine, ſuld call, and conveene before them, and the inhabitantes of ilk Schireffedome, all and ſindrie the Schireffes, and vther Officiares, allweill, heretable, as Temporall, and deputes: And taxe and modifie the damnage and ſkaith done be them to the King and his lieges, to ane certaine ſumme: Quhilk taxation being maid, the Schireffe and vther Officiares, ſuld bee put to the knawledge of ane gude and ſufficient aſſiſe; And being found culpable, and convict, they ſuld incontinent be put in the Kingis priſon, vntill he, with adviſe of his Councell, declare his will. And mair-over, all the ſaidis Schireffes and vther Officiares, either heretable, or Temporal, being filed & convict, ſuld forefalt, & tine their office, induring their life-time. Da.2. In his Parliament halden at *Perth*, 18. Feb. 1369. And of his reigne. 40. zeire. Schireffes may be puniſhed at the kings will, and deprived

Thridlie, the juſtice Generall, in his juſtice aire, ſall challenge and accuſe, the Schireffes, and vther the Kingis Officiares; and take cognition how they haue vſed and exerced their offices. And gif ony of them be founde culpable or faultie: The juſtice ſall remooue him fra his office, vntill the nixt Parliament; And ſall put ane vther in his place, to vſe the office in the meane time. And mair-over, the juſtice ſall take ſufficiente ſover- The Schireffe may be removed be the juſtice, and puniſhed be the three eſtaites.

ſovertie of him, vnder certaine paines, that he ſall compeir in the nixt Parliament to vnderly the determination and puniſhment to be injoyned to him be the Parliament, for his fault; And he ſall na-waies be reſtored to his office, bot gif the three Eſtaites think the ſamin expedient. *Stat. Rob. Br. 3. Ex libro Sconenſi.*

Schireffes heretable and Temporall.

Fourthlie, gif the Schireffe, or ony vther officiar of law, be lauchfully proven, or notourlie knawin faultiſe, or negligent in the execution of his office perteining to him in fee and heretage: He ſall tine the ſamin, and all the profites thereof, for ane zeir and daye, and ſalbe puniſhed in his perſone and gudes at the Kingis will, after the qualitie of the treſpas. And gif his office is Temporall, he ſall tine the ſamin, for all the times he hes it: And vther-waies ſalbe puniſhed, as ſaid is. Ia. 2. p. 14. c. 77.

Fiftlie, gif the Schireffe, or ony judge Ordinar, will not execute his office, and miniſter juſtice, he ſalbe puniſhed, and put fra his office, for ane certaine time, after the diſcretion of the King, and the Councell, and puniſhed at the Kingis will, and pay the expenſes to the partie compleinand. And gif he be found partiall or culpable, in the adminiſtration of juſtice; And is Schireffe in fee and heretage, he ſall tine his office for three zeires. And gif he be Temporall, havand his office for ane certaine time, he ſall be put fra the ſamin perpetuallie: Pay the expenſes to the partie offended, and puniſhed in his perſon, at the Kingis will. Iam. 3 p. 5. c. 26.

Tinſell of honour & fame.

Sextlie, all Schireffes, and vther judges, alſwell Spirituall as Temporall, within regalitie and royaltie, ſall do trew and equall juſtice to al the Kingis lieges, without ony partiall counſell, or taking of buddes, vnder the paine of tinſell of their honour, fame, and dignitie. Iam. 5. par. 7. cap. 104.

Extract of proceſſe

Gif ony partie compleinis vpon the Schireffe, that he hes done to him wrang, in giving or pronuncing ony ſentence or decreete againſt him; And deſiris the ſamin to be extracted and delivered to him, vpon his expenſes: The Schireffe ſuld giue and deliver the proceſſe, led and deduced before him, to the partie, vpon his expenſes: And ſuld take foure pennies for ilk acte allanerlie. Ia. 4. p. 6. c. 67. At the leaſt, he ſuld extract proceſſe, decreetes, giue ſaiſinges and retoures, at reaſonable prices. Ia. 6. p. 12. c. 124.

ΠΑΡΑΙΝΕΣΙΣ AD IVDICES.

OMnis qui iudicare debet, Stateram in manu teneat: Nam æqualia & ſine perſonarum exceptione eſſe debent iudicia. Nihil iniquius quàm munera capere in iudiciis: Quia munera excæcant corda prudentium, & ſubuertunt verba iuſtorum. Qua enim Bilance judicabitis, eadem judicabimini. Quapropter, tu judex, timeas Deum judicem, ne fortè eo judicante, damneris. Stat. Wilh. Cap. 27. Proinde ſis Deum honorans & timens: Sapiens & in ſcientia potens: Veritatem ſequens & amans: Auaritias odiens & deteſtans. de Maritag. c. 2. Caue juſtitiam ſubuertas odio, per quod inuenta aliqua malitioſa cautela, contra partem tibi exoſam, reddis judicium indirectum: Vel cupiditate, dum corruptus muneribus, malitioſè judicabis: Vel timore, dum metu potentioris, verè judicare non audes: Vel amore, dum cauſa amicitiæ defendis amicum, & ſupprimis inimicum. de Maritag. c. 4. Facias igitur juſtitiam æqualiter, tam pauperibus, quàm diuitibus. Stat. 2. Rob. Br. Cap. 2. Quia omnes judices & magnates, qui plus fauent his, quàm illis in judicio, aut malefactores vllo modo manu-tenent, ſunt falſi, & perjurati contra Deum, Regem & populum regnj. leg. Mal. Mak. c. vlt. in fine.

SCOTIA,

SCOTIA, Sum-time ſignifies that part of Scotland, quhilk is on the North part of the water of *Forth. Aſſ.reg.David.c.ſtatuit.21.* And is opponed to *Lodoneium*; quhilk now we call *Loudiane.* For King *Dauid* the Firſt, in the thrid zeir of his reigne, *Anno Dominī 1126.* Be his Charter maid, *Omnibus Scottis & Anglis, tam in Scotia, quàm in Lodoneio conſtitutis*, gaue & diſponed to S. *Cuthbert* and his Monkes in Durhame (*Dunelmenſi Eccleſiæ*) The landes of *Goldingham, Lummesdē, Reningtoun, Eiton, Fiſſewik, Auld-Cambus, Swintoun, Prendre-geiſt*, and vtheris, lyand *in Lodoneio*, quhilk nowe lyis in the Mers, and Schireffedome of *Berwick.* And in the actes of Parliament, juſtices generall ar ordained to be, ane, or twa, on the South ſide of the water of *Forth*: And ane or twa, on the North ſide thereof. Ia.3.p.14.ca.97. Quhilk agries with the act maid be King *Iames* the Second, par.3.c.5. Quhair it is ſtatute, that the juſtice on the South ſide of the Scottiſh ſea, ſet their juſtice aires, and halde them twiſe in the zeir. And alſo on the North ſide of the Scottiſh ſea, as auld vſe and cuſtome is. And in the laws of *Malcolme Mak-Kenneth.*ca.4. *Mare Scotiæ*, is taken for the water of *Forth.*

SECTATOR, Ane ſoytor in court, quhais qualities and office. *vid. verb.Sok.*

SEK Of wool, and fuiring of gudes be the ſek, ſerplath, and tunne. *vid.Serplath.*

SERIANTERIÆ, *Sergenteriæ. Lib.2.c.Dicitur autem.72.* In the quhilk place, *pro Serianterijs, mendosè legitur, Suggeſtoribus. Serianteria, à ſeriando*, as *miniſterium, à miniſtro*, or *ſervitium à ſervo*; Signifies an maner of halding of landes, ſpeciallie in the Lawes of England, quhair *Grande ſeriantye*, is quhen ane man haldis his lands of the King: For the quhilk he ſuld paſſe with him in his hoiſt, or to beare his banner with him in his warres; Or to lead his hoiſt or armie. And hereto belangis warde, mariage, and relieue, quhilk is ane maiſt ſpeciall Knichts ſervice. *Petit ſeriantye*, is quhen ane haldis his landes of the King; yeelding to him ane knife or buckler; ane ſcheife of arrowes, ane bow, or vther ſik ſervice, conforme to his infeftment: Quhair-vnto na-waies belangis warde, mariage, or relieve; quhilk we may call, blench-ferme, or *alba firma.* Read the ſtatute, maid be King *Edward* the Firſt, King of England. 18. zeire of his reigne, anent wardes and relieues.

SERIANT, *Sergeant*, ane French worde. For likeas meſſengers, cummis fra the *French* worde *Meßiers*: Swa Sergeant likewaies cummis fra Sergent; *Quæ eſt vox compoſita, de Serrer, quod eſt includere, & gent, quod pro gente, plebe, vel populo vſurpatur. Itaque Seriandus dicitur, qui iuſſu magiſtratus, quemlibet de populo reum criminis, in carcerem conjicit, ſeu includit*: That is, he quha at command of the Magiſtrate, incluſis, or lockis in priſon, guiltie perſones delated, or ſuſpect of ony crime. *Seriandus curiæ*, or *ſerviens curiæ*, the Seriante of the courte, officiar, executor of letters or ſummondes, quha be the interpretoures of the civill law, is called, *Nuntius. vid.Recordum.*

SERP-

SERPLATH. Iam. 1. p. 2. c. 38. Iam. 2. p. 14. c. 68. Conteinis foure ſcore ſtanes. For the Lordes of Councel, *in Anno*, 1527. decerned four ſerplaithes of packed wooll, to conteine ſexteene ſcore ſtanes of wooll. Be the trafficque of merchandes now vſed, The merchandes vſis to pay fraucht for their gudes to Flanders, be the Sek: To France, Spayne, and England, be the Tunne: And to Danskene, and the Eaſter Seas, be the ſerplath. Three maners of furing of gudes

As I vnderſtande, ane Serplath of gudes, is onelie counted betuixt merchand and skippers, for furing of gudes to the Eaſter Seas, and fra thine hame to this realme. Swa that for everie Serplaith of gudes, fured, or promiſed to be fured Eaſterward, the skipper is obliſhed to fuir hame to this realme, twa laſt of gudes: And this Serplaith of gudes is of na greater quantitie, nor the ſek of guds to Flanders. 1 Serplath.

And ilk Sek, be the act of Parliament, Ia. 6. p. 7. cap. 108. Suld conteine twentie foure ſtane of wol: And be the dailie calculation of merchands, fourtie Trois ſtane. Ilk Trois ſtane, conteinis ſexteene pound Trois. And ilk pound weicht thereof, conteinis ſexteene ounce Trois. 2 The Sek. Trois ſtane

The ſek of wooll, is commounlie ſet be the Skippers, to ane Tun: Ilk Tun conteinis, ſex hundreth pound Trois weicht. Ilk hundreth weicht, conteinis fiue ſcore pounde weicht, quhilk is ſex ſtane, and ane quarter Trois. Sek of wol Tunne. Hundreth weicht.

The wooll, quhen it is bocht be merchandes, is boucht be the Trone ſtane, quhilk conteinis commounlie, xix. pound and ane halfe Trois: Alwaies concerning the ſek of wool, I finde na ſolide or conſtant weicht thereof: For ſome ſeckes wilbe mair, and ſome will be leſſe nor fourtie Trois ſtane; Bot commounlie the ſek of wooll, conteinis fourtie Trois ſtane, as ſaid is. Tron ſtane

Ane Laſt of guds fured hame, conteinis commonlie twelue Barrelles. And the auld forme of furing of gudes, fra Danskene to this Realme, was for every ſerplaith, as it is zit, twa Laſt. Bot for this Laſt, the skippers fuiris hame, fourteene barrelles, Ilk Barrell being of weicht, ane ſchip pound. And of licht gudes, ſik as lint and hempt, there is fured for the ſerplath, twa Laſt. 3 Furing of gudes be the laſte Barrell

Ilk Laſt is twa packs: And ilk pak is als great als halfe ane ſek of wooll skinnes, and conteinis in weicht threttie ſex Spruſſe ſtanes Pack.

Ilk Spruſſe ſtane, conteinis twentie aucht pound Trois weicht. Spruſſe ſtane.

Swa the laſt exactlie weyed, will conteine of our Trois weicht, ſex ſcore ſex ſtanes. And for ane laſt of walx, that is fured hame be ſtrangers, fourteene ſchip pounde. And be Scottiſh skippers, twelue ſchip pound. Laſte of walx.

Alſo, of Tar, pick, and ſik like wares, twelue great barrelles for the laſte, and fourteene ſmall Barrelles. Thir great barrelles, ar called Hamburgh trees, and ar in greatneſſe, nocht vnlike to our Salmond trees, and ſuld conteine fourteene Gallounes: and the ſmall barrelles, ar ſome what greater, nor our herring trees. Of tarre Pick. Great and little barrelles.

Rye meill. Likewaies of Rye meill, ſome times twentie foure barrelles ar fured for the Laſt, ſpeciallie be ſtrangers: and be our awin skippers, auchteene barrelles for the Laſt thereof. And ane Laſt of Rye, is ſome-time auchtene Bolles, and ſometimes nine-teene bolles in meaſure.

Rye.

Item, ten ſeckes of wooll, makis ane Laſt of wooll.

Daiker. Likewaies, ten hides makis ane daiker, and twentie daiker, makis ane laſt: Twelue dowzane of glooues, or Ledder poyntes, makis ane groſſe: And ane great groſſe, conteinis twelue ſingle groſſe.

Groſſe.

Barrell of Braſſe. Ten ſtane of braſſe, makis ane Barrell.

Laſt of Salmond. Sex Barrelles of Engliſh drinking Beare, makis ane Tun.

Twelue Barrelles of Salmonde, ar bocht be the merchandes, for the Laſt: Bot in furing of them over the Sea, the skippers countis onely nine barrelles for the Laſt.

Flanders Barrell. And likewaies the Sek, albeit it be counted in Flanders to twelue Barrelles, zit twelue of their barrelles, conteinis ſexteene commoun Barrelles.

Fidder of leade The Fidder of lead, conteinis neere by, ſexſcore and aucht ſtane.

Schippe pounde Ane ſchip pound, conteinis ſexteene ſtanes and ane halfe, of Scottiſh Trois weicht.

Sexſcore of skinnes, is reckoned to the hundreth.

As likewaies, ſex-ſcore elnes of woollen claith is counted for ane hundreth. Ia. 6. p. 7. c. 108. Quhilk is conforme to the auld vſe, obſerved in the daies of King *Dauid* the Seconde, as is manifeſt be the cuſtome compt, maid be the Cuſtomer of the Burgh of Striviling, the zeire of God, ane thouſand, three hundreth, ſextie aucht zeires.

VVeichtes and meaſures in Orknay.

THe malt, meill, and beare, are delivered in *Orknay*, be wecht in this maner. *Inprimis* 24. marks makis an ſetting. Item 6. ſettings makis an meill. Item 24. meales makis ane Laſt. Item of meille and malt called *Coiſt* ane laſt makis ane Scottiſh chalder: Item ane Laſt and ane halfe of beare conteinis 36. meales: 36. meales makis ane chalder. Item the butter is deliuered in barrelles, quhair the quanttie is great, bot quhair the quantity is ſmall, it is delivered in markes, and leſh poundes. That is to ſay, xxiiij. marks, makis ane ſetting, as ſaide is, and 6. ſettings makes ane leſh pound. Item, ane ſtane and twa pund Scottiſh, makis ane leſh pund. Item 15. leſh poundes makis ane barrel. Item, 12. barrelles makis an Laſt. Item the fleſh is delivered be appriſing. *viz.* 10. meales makis ane ſuffieient Cow, and an ſufficiēt Oxe. Alſo ane gild Oxe is appriſed to 15. meales, & ane Wedder is four meales. Item an Gouſe is twa meales. Item ane Capon, is half ane Gouſe, *viz.* ane meale.

SERVICIVM *Militare*, Knichtes ſervice, and ſpeciallie concernis warde and relieue. *Vide Serianteria. Vide Harbert. Vide Warde.*

SERVI-

SERVIENS *Curiæ, ſeriandus curiæ. Leg. Malc. Mak. cap. 3.* Ane ſeriand, or officiar of Courte, the executour of ſummoundes, quha ſummondis and attachis ony perſone to compeare in ane court, to anſwere to ane vther, conforme to law and reaſon. *Molineus in ſtilo ſupr. cur. par. 1. c. 20.* Quha is called *ſervien*, becauſe he ſuld ſweare to ſerue leallelie and trewlie the King, in execution of his office. *Quon. attach. c Nullus 57*

SETTER-DAYIS ſlop. *ſtat. Alex. cap. hæc eſt Aſſiſa. 27. Leg. Burg. cap. hæc eſt Aſſiſa. 113.* Iam. 1. Parlia. 1. 26. Mail. cap. 11. Iam. 4. Parlia. 2. cap. 15. quhilk ſtatute maid, as is alleaged be King *Alexander*, is aſcriued to King *David*, be King *Iames* the Fourth, in the place foreſaide: The Setterdayis ſlop, is ane ſpace of time, within the quhilk it is nocht leaſum to take Salmonde fiſh; that is, fra the time of Even-ſang after nooneon Setterday, vntill the riſing of the Sunne on Monondday. *ſtat. 2. Rob. Br. cap. Item ordinatum. 12. ſtat. 1. Rob. Br. cap. 8. Leg. Foreſt. cap. Omnes aquæ, 85. Iter. Camer. c. calumniabuntur. 16.*

SIMINELLVS, *Leg. Burg. c. 122.* From the Latine worde, *Simila*, quhilk ſignifies the beſte and ſmalleſt parte of the Quheate, or flowre, quhite bread, or maine bread: In the quhilk ſignification, in the Dutche tounge, it is commounlie called *Semmell*.

SOK, *Lib. 1. c. 3.* Ane auld worde vſed in Chartoures and infeftmentes, quhilk in ſindrie auld buikes conteinand the municipall lawes of this realme, is alled *ſecta de hominibus ſuis, in curia, ſecundum conſuetudinem Regni.* Swa after my opinion, he quha is infeft with Sok (quhilk now we call Soyt, from the French worde *Suite. h. e. ſequela*) hes power and libertie to hald courtes within his awin Barronnie or landes: In the quhilks courtes, *homines ſui*, or his vaſſalles ſuld giue ſoyt, and ſend for them, ane quha is called Soytor, or *Sectator, a ſequendo*; Becauſe he ſuld follow the courte, in the quhilk he ſuld compeare. This office was verie profitable, for furthering of juſtice. And firſt, hee quha is obliſhed to giue Soyte in the Court of his Over-lorde, ſuld do the ſamin, conforme to the tenour of his infeftment, and na vtherwaies. *Leg. Foreſt. c. nullus. 68. ca. Si hæreditas, 69.* And gif he aucht three Soytes be his infeftment: he ſall compeare bot at three head Courtes in the zeire, without Summondes or warning. *Mod. ten. cur. c. 1. c. 31.* Na judge aucht of law, or of reaſon, to accept ony man in court as Soytour. Bot gif he can make ſufficient and lauchfull reporte, of proceſſe, doomes, judgemente, and in lauchfull forme, giue and pronunce doome of Mutes, and pleyes in Court, followed and defended before him in court. *Mod. ten. cur. cap. 38. Quon. attach. c. Nullus ſectator. 20.* And ilk Soytour before he be admitted be the Baillie, or judge, ſuld be examined in three courtes, gif hee can make recordes of the courts, & giue ſufficientlie ane warde, or ane dome of wardes or doomes, asked in the court or not. And then quhen he is be his fellowes admitted, he may not afterward for weakneſſe of knawledge be rejected. *Quoniam attach. nullus. 20.*

Sectatores

iij. Soytes.

Soytour ſuld be qualified

The aith of ane Soyture

Ane Soytour, is obliſhed to make faith, that hee ſall leallelie, and trewlie make recorde of Courte (that is of the claime, libell and proces) and ſal pronunce lauchful & trew ſentence, according to the knawledge given to him be God; And ſall after his vnderſtanding, leallelie & trewlie ſerue, induring the time of his office. *Stat. Gild. c. 50.* The court beand

The Soytour vnlaw is the abſentis

ſenſed, the Serjand thereof ſall call the ſoytes, and defalt the abſentes, that ar nocht lauchfullie eſſoinzied: And gar ane Soytour of the courte, deeme them in ane vn-law, with the conſent of his fellowes & Collieges. *Mod. ten. cur. c. 1.* Be the auld law of this Realme, and actes of Parliament. Iam. 4. p. 6. c. 95. Doomes and decreetes given and pronunced be Soytoures, in ane inferiour court, was falſified and reduced in ane ſuperiour court; as the proceſſe of brieues wrangeouſlie deduced in barron courte, was falſified in ane Schireffe courte, and doomes given in the Schireffe court; was falſified in the juſtice Court. *Lib. 2. c. Dos duobus. 19.*

Falſing of doomes

And laſt of all, doomes pronunced in the juſtice Court, was falſified in Parliament, before the Lordes, called *Auditores querelarum*, in this maner conteined in the regiſter. 7. October. 1476. *Datum fuit iudicium infraſcriptum, per os Alexandri Dempſter iudiciarij Parliamenti, in præſentia Sereniſſimi Principis Iacobi tertij S. D. N. Regis, cum corona in capite ſuo & ſceptro in manu ſeden. in Cathedra Iuſtitiæ Parliamenti, ſub hac forma:* The Lords choſen be the three Eſtaites of this preſent Parliament, vpon diſcuſſing of the doomes, deliveris and declaris, that the doome given in the juſtice aire of Edinburgh, the xij. of Iulij laſt by-paſt, be the mouth of *Andrew Blackſurd* ſoytour, for the Lands of N. for *Iohn N.* and *Ionet* N. his ſpouſe, and againe called be *David Balfoure* of *Caraldſtoun*, fore-ſpeaker for *Archebald N.* was evill given, and weill againe ſaid: For diverſe reaſones ſchawen and vnderſtand to the ſaidis Lordes: And therefore ilk ſoytour of the ſaide doome, and their lordes, ilk man be him-ſelfe, is in ane amerciament of the courte of Parliamente, ſik as effeiris to be taken in the juſtice aire; and in ane vnlaw of the ſaid juſtice aire for them; And in ane vnlaw of Parliament among them all, ſik as effeiris of Lawe: and this I giue for doome. Swa it is manifeſt, that in all courtes inferiour to the Parliament, the ſoytoures pronunced the doome. And gif the doome given be them in ane Barronne courte, was falſified in the Schireffe courte: All the ſoytoures payed bot ane vnlaw. Bot gif the doome given be them in the Schireffe courte, was falſified in the juſtice courte, ilk ſoytour payed ane vnlaw of ten poundes, of the quhilk diverſitie, the reaſon is conteined in. *Quoniam attach. c. quilibet. 7.*

SOKMANRIA, Or Socage, Is ane kinde of halding of Landes, quhen ony man is infeft freelie, without ony ſervice, warde, relieue, or mariage, and payis to his Maiſter ſik dewtie, as is called *petit ſeriantie*: Or quhen ane haldis his Landes in name of Burgage, or *in Libera Eleemoſyna. de Maritag. Cap. 1. Soccomannus*, is called ane vaſſall, or Free-halder, quha haldis his Landes in maner fore-ſaide:

Soccomannus

or in blench-ferme, *ſiue nomine albæ firmæ: Et opponitur militi, qui tenet per ſeruitium militare:* That is, be ſervice of warde and relieue. *Lib. 2. Cap. Si quis plures 30. Cap. Et hæredes, 41.* And in *Magna Carta* of England. *Anno. 51. Henr. 3. cap. 27.* Mention is maid of ſindrie formes of halding. *Viz.* Free-ferme, burgage, ſoccage, and Knicht-ſervice. Read the ſtatute maid be *Edward* the Firſt, King of England, the xviij. zeire of his reigne. Vtheris alleagis that *Socagium*, cummis fra *Socco, ſiue Aratro*, affirming that Socage is properlie, quhen the tennent is bounde and obliſhed, to cum with his pleuch to teill and labour ane part of the Lordis landes. Concerning tenures, and divers halding of lands, reade the treatiſe written be Littleton. *Soccage*

STALLANGIATORES, *A ſtalla*, Creamers, or Forraine merchandes, quha within Burgh, in the time of Faire or mercat, payis certaine dewtie for their ſtall or ſtande, in the quhilk place they ſell their merchandice: For it is ordained, that ilk ſtallanger ſall either agree with the Proveſt of the Burgh in the beſte forme as he may: or elſe ilk mercat daye, ſall paye to him ane halfe-pennie. *Leg. Burg. cap. Quilibet. 39.* And in the aulde forme of cuſtomes, It is called the ſtallange of the mercatte. And *Leg. Burg. Mercenarius. 40.* It is called *Stallum*, or *Botha in Foro.*

STINGISDINT, *Leg. Burg. c. Sciendum eſt. 9.* Ane dint or ſtraike with ane ſting or Batton: In Latine, *Fuſtigatio.*

STERLINGVS, *Eſt genus ponderis*, ane kinde of weicht conteining threttie twa cornes, or graines of Quheate, *Vt in Aſſiſa Reg. Da. de ponderibus & menſuris.* And in the Cannon law, mention is maid of fiue ſhillinges ſterling, and of ane marke ſterling. *c. 3. de Arbitris. c. Conſtituit. 12 de procuratoribus.* And the ſterling pennie is ſwa called; becauſe it weyis ſa mony graines, as I haue ſindrie times proven be experience. And be the Law of England, the pennie, quhilk is called the ſterling, round, and without clipping, weyis threttie twa graines of Quheat, without tailles, quhairof twentie makis ane ounce; and twelue ounces makis ane pund; and aucht pounde, makis ane gallonne of wine; and aucht gallounes, makis ane buſchell of London, quhilk is the aucht parte of ane quarter. *Anno 17. Edward. 2. c. 10.* The quhilk cuinzie, was meikle vſed within this realme, as is manifeſt be auld Charters and evidentes. For the ſexteenth daye of *Auguſt*, the zeire of God, 1395. *Walterus Seneſcalli, Dominus de Ralſton, Vicecomes de Perth, impignorauit, Necnon nomine pignoris dedit, & conceſſit Nobili & potenti Dn. Dom. Roberto, Comiti de Fife & Menteith, totam et integram Baroniam ſuam de N. pro ducentis marcis ſterlingorum monetæ Scotiæ, ipſi per eundem Comitem mutuatas, & præ manibus plenariè perſolutis. Tenen & haben ipſi Comiti, & hæredibus ſuis, de Domino Rege &c. Quouſque dictus Walterus Seneſcalli, aut hæredes ſui, præfato Domino Comiti, vel ſuis hæredibus, ducentas marcas ſterlingorum monetæ Scotiæ vno die, inter ſolis ortum & occaſum, in Eccleſia Parochiali de N. perſolverit, vel perſolverint.* Ane charter conteining ane reverſion, & ſterling money.

Et praeterea dictus Valterus omnes firmas, reditus, commoditates, & proficua, de dicta Baronia, medio tempore prouenien̄, dedit & concessit, prose & haeredibus suis, praedicto domino Comiti, & haeredibus suis, pro suo consilio bono, ipsi impenso, & impendendo. Faciendo inde annuatim, praedictus Comes & haeredes sui, Domino Regi servitia debita & consueta.

The quhilk Charter contemis the reversion, and also ane donation of the profites of the lands, quhilkis were wad-set, conforme to the practicque vsed and observed vnto the time of King *Iames* the Thrid, of gude memorie. *vid. Regres.*

SVBVASSORES, *Subualuassores*, base halders, or inferioure halders, speciallie, they quha haldis their Landes of Knichtes. *leg. Malc. Mak, c. 4. Quoniam attachiamenta cap. Si aliquis 49. As. Reg. Dauid. c. Statuit. 8.* Quhair it is ordained, that ilk person, quha is accused criminallie, sall bee judged be his Peere, or Superioure in estaite and dignitie.

T.

TAYNT, *vide* Attaynt.

TENEMENTVM, Is commounlie taken for the propertie of onie landes, Or immoveable gudes within Burgh, or without the samin. *Lib. 2. cap. Dos duobus. 19. capit. Fieri autem. 67. Liberum tenementum.* And the superiour sulde not haue the Warde of the tenement perteining to his vassall being *Minor*: Nor can craue na service nor relieue fra him, being *Minor* or *Maior*, except he first receiue his homage. *Lib. 2. cap. Praedictis. 60.* In the quhilk signification, it is commounlie vsed in the Lawes of England.

TERRÆ *Dominicales*, Ane worde commounlie vsed in Charters and infeftmentes, quhilkis ar called ane Maines, or demaine lands laboured and occupied be the Lord, and proprietar of the samin: from the French worde, *Domaine*, *Domanium*, or *Demanium*: Quhilk worde properlie signifies the Kingis Landes perteining to him in propertie. *Quia domanium definitur illud quod nominatim consecratum est, vnitum & incorporatum Regiae Coronae, vt scribit Chopinus de domanio Franciae. Tit. 2. per l. Si quando 3. C. de bon. vacant. Lib. 10. Et Matthaeus de afflictis in Constitut. Siciliae. Lib. 1. Tit. de locatione demanij 82.* quhilk may be called, *Bona incorporata, & in corpus fisci redacta.*

Domanium

THANVS, Is ane name of dignitie, and appearis to be equall with the Sonne of ane Earle. For the *Cro* of theane, and the vther is alike. *Lib. 4. c. Si quis calumnietur. 28. statuit. 64.* And *Thanus* was ane Freehalder halding his landes of the King. *Quoniam attach. c. Recordatio. 63. Ass. reg. Da. c. Recordatio. 17. stat. Alex. c. Recordatio. 26.* And gif ane man not taken with the fange, is accused of thieft, and na sufficient probation is deduced

ced againſt him; he ſuld purge him be the aith of twentie ſeven men, or of three Thanes. *Lib. 4. c. Si quis calumnietur 28. Thanagium Regis*, ſignifies ane certaine part of the Kingis landes or propertie, quhairof the rule and gouvernement perteinis to him: quha therfore is called *Thanus*. For *Domania Regis, & Thanagia Regis idem ſignificant. Aſ. reg. Da c. ſtatuit Dominus 35.* It is ane Dutche worde, for *teiner* ſignifies ane ſervand, and *teinen* to ſerue. And *Thane* is likewiſe ane ſervant, and *vnter thane* ane inferiour ſervand or ſubject. *Vid. Leg. Britonum verbo Thanus.*

THEME *lib. 1. c. 3.* is power to haue ſervandes and ſlaves, quhilk ar called *nativi, bondi, villani*, and all Barronnes infeft with *Theme*, hes the ſame power: For unto them all their bond-men, their bairnes, gudes, and geare properlie perteinis, ſwa that they may diſpone there-upon at their pleaſure. *lib. 2. c. Conſequenter 13. cum ſeqq.* And in ſume auld authentick buikes it is written, *Theme eſt poteſtas habendi nativos, ita quod generationes Villanorum veſtrorum, cum eorum catallis, ubicunque inveniantur, ad vos pertineant. Theme* cummis fra *thein, id eſt, ſervus*, and therefore ſum-times ſignifies the bond-men and ſlaves, conforme to ane auld ſtature, and law. *De curia de Theme. Quod ſi quis teneat curiam de Theme, & illa querela in illa curia infertur, ad quam theme vocantur, non debet illa curia elongari, ſed ibidem determinari, & omnes Theme ibi compareant.* Quhilk is underſtand of the queſtioun of libertie, quhen it is in doubt, quhidder onie perſon is ane bond-man, or free-man: Quhilk kinde of proces ſuld not be delaied, bot ſummarlie decided. Quhairof their is twa kindes: for either ane free-man is alleaged to be ane ſervand and ſlaue, or ane quha is in ſervitude, deſits to be maid free, and put to libertie. *Dict. Cap. 13. Cap. 14.* *Curia de Theme, id eſt, de natiuis, ſeu Seruis*

THIFT-BOTE, *vide* Bote.

TIMBRELLVM, *Tumbrellum*, ane kinde of torment, as ſtocks, or jogges, quhair-with craftes-men, ſik as browſters ar puniſhed. *Leg. Burg. cap. Si aliquis 21.* Quhair it is called *Caſtigatorium*.

TOLL *Lib. 1. Cap. 3.* Cuſtome, from the Greeke worde of the ſamin ſignification τέλος. He quha is infeft with Toll, is cuſtome free, and payis na cuſtome. Quhilk is manifeſt bee ſindrie auld Buikes, quhairin it is written. *Tol. h. e. Quod vos & homines veſtri, de toto homagio veſtro ſint quieti de omnibus mercantiis, & de tolneto de omnibus rebus emptis & venditis.*

Mair-over, all Earles, Barronnes, Knichts, vaſſalles, life-renters, Free-halders, and all quha hes landes *Nomine eleemoſynæ*, ſuld be quite and free, fra paymente of Toll and cuſtome within Burgh, in bying meate and Claith, and vther neceſſair thinges to their awin proper vſe. Bot gif ony of them bee commoun merchandes, they ſuld paye tholl and cuſtome. Albeit they haue als greate libertie, as Barronnes. *De Iudic. cap. 3. Leg. Foreſt. cap. Comites. 13.* And in the auld Britton Lawes of King EDVVARDE, It is written. *Thoill, quod nos dicimus Tholoneum,*

eſt quòd ita infeodatus, habeat libertatem emendi & vendendi in terra ſua.

TORRALIVM, *Thoralium, a torrendo*, is called ane Kill, quhair cornes ar dryed. *Leg. Burg. c. Si quis. 53. De combuſtione domus aut torralij*, Of the burning of the houſe or Kill. Gif ane ſervand burne rakleſlie thy houſe, Kill, or neichtboures houſes adjacent: He ſuld not bee puniſhed, bot tinis his ſervice: Bot gif ony man hiris ane Kill, and it burne, he ſall paye bot the hire. Bot gif he borrowis it, and it burne, he ſall paye the valure of it, to the partie skaithed. *vide* Iam. 1. Parlia. 4. Cap. 71. *Cum ſeqq.*

TORT, *Et non reaſon*, vn reaſon, wrang, and vnlaw. *Stat. 2. Rob. Br. c. Item quod nulla. 17. Tort* in the French toung, is wrang or injurie: Vnlaw cummis fra *on*, *Privativa particula apud nos & Germanos, eodem modo quo In, apud Latinos*, and law, or lauch, *ideſt lex: Quaſi ſine lege, vel contra legem, vel quod non iure fit. Ius Normand. Lib. 12. cap. 1.* Actiones of wrange and vnlaw, appearis to be civill actiones, and ar opponed to Actiones criminall, touching life and lim. *Stat. Alex. cap. Si quis 9. Cum ſeqq. Leg. Mal. Mak. c. 4.*

vnlaw.

TOSCHEODERACHE, ane office or juriſdiction, not vnlike to ane Baillierie, ſpeciallie in the Ilis and Hielandes. For 9. Mart. 1554. *Neill Mack-neill*, diſponed and annalled to *Iames Mack-Oneil*, the Lands of *Gya*, and vtheris with the *Teſchodairach* of *Kintyre*. Some alleagis to be ane office perteining to execution of ſumonds. *Lib. 1. cum autem. 8. Quon. attach. c. Si aliquis 49.* Sikas ane quha ſummondis, attachis, or arreiſtis ane vther, to compeir before ony judge. *Stat. Dav. c. 6.* Vtheris vnderſtandis the ſame to be ane Crowner. *Lib. 4. c. Raptus 9.* Laſt, ſumme vnderſtandis it to be ane ſearchour, and taker of thieues, and limmers: For King *Evenus* did ſtatute, that in ſindrie Schireffedomes, there ſuld be ſindrie ſearchoures of thieues, rievers, and of them that lyis in waite in hie-ſtreetes, and commoun paſſages. *Hector Boetius. Lib. 2. Lib. 10. Aberrans (inquit) Pecus, aut Domino furum indagateri (Tachedcrauch vulgus appellat) aut Sacerdoti reddito: quod ſi triduum apud te retinueris, furti reus eſto:* In the Civill Lawe, they are called, *Latrunculatores. Leg. Solemus. 61. ff. de Iudic.*

Latrunculatores

TIMBRIA *Pellium, leg. Burg. cap. Capitulum. 133.* Ane Timmer of skinnes: That is, ſwa mony as is incluſed within twa broddes of Timmer, quhilk commounlie conteinis fourtie skinnes: In the quhilk maner, merchandes vſis to bring hame Martrik, Sable, and vther coaſtelie skinnes and furringes.

TIMBRELLVS, *Dicitur parvus Cetus*, ane little Quhaill. *Le. Foreſt. c. Si quis cetum. 17. de Iudic. c. 27.*

TINNELLVS, *De iudic. c. 27. Leg. Foreſt. c. Si quis Cetum. 17.* The ſea marke, vther-waies in Engliſh *Tyde-mouth*. That is, the fatreſt parte, quhair the ſea tyde flowis. *Littus quo ſcilicet fluxus hybernus maris maximus excurrit, hoc eſt, quantumcunque mare aliquo tempore plus extenditur*

Littus

in

in hyeme vel æstate, tantum est littus eius. §. Flumina. Et ibi Gl. Instit. de rer. divis.

TRAISTIS. Iam. 3. par. 14. c. 99. Signifies ane roll, or Catalogue, conteinand the particular dittay, taken vp vpon malefactoures, quhilk with the portuous is delivered be the justice Clerke, to the Crowner, to the effect the persones, quhais names ar conteined in the portuous, may be attached, conforme to the dittay, conteined in the traistis. For like as the portuous comprehendis the names of the persones indited; swa the traistis conteinis the kindes of dittay, given vp vpon them; quhilk is swa called, because it is committed to the traist, faith, and credite of the Clerkes and Crowner; quha gif they be trustie, and faithfull, suld nocht reveale, deleete, change, or alter the samin. Iam. 2. p. 6. c. 28.

TRIBVLA, *Leg. Burg. cap. Si homo 16.* Ane Flaile quhair-with corne is threshen, *à terendo, quod frumentum terat.* Like as *Tribulus* is called ane thrissill, and *Tribulum* ane Pestell, quhair-with spices, or ony vther thing is brayed in ane morter: *Barbarè magis quàm Latinè, secundam vsitatum versum à pueris in scholis decantatum: Tribulus thressill, la flaill, lum quoque pestell.*

TVERNAY, *Quid sit valde ambigo, & hic aliorum auidè expecto iudicium.* In the Burrow lawes. *Cap. Quilibet. 34. Si vxor alienus fuerit calumniata de aliquo, in placitis Burgeram vtitur Tuernay.* That is, as in the auld Englisch buik, the husband may do richt for his wife, in courtes of Burgh. *Et de iudic. cap. cum quando. 28. Si quis fuerit implacitatus coram iustitiario domini regis, vel alio ballivo, si dominus eius, vel eius Ballivus venerit & allegauerit pro ipso in debita hora, potest recuperare curiam domini sui. Et si per negligentiam suam responderit & dixerit twentynay de omnibus sibi oppositis planè respondebit, & sic amittit curiam Domini sui. In quibusdam libris legitur Twentynay. Itaque conijcio esse antiquum verbum forense, quo reus vtens, intelligitur approbasse iudicem, adeo vt eum postea declinare non possit.* Twentynay

V.

VADIVM, *Vadimonium*, from ane auld worde *veddum*; vsed in the Britton Lawes: In Latine, *Pignus*, in French *Gage*, quhilk we cal ane wedde. *Immobile vadium*, signifies immoveable gudes, sik as landes annalied and wadset vnder reversion: The profites quhairof, *computantur in sortem*, That is, ar compted and reckoned within the stok. Swa that the samin being payed in sik quantitie as extendis, & is equivalent to the quantitie of the stocke, and principall summe: Thereby the principall summe, is esteemed, as compted and payed, quhilk is called *Mortuum vadium*. Bot nowe the contrair is maist commounlie vsed in practicque of *Immobile vadium*

of wadsettes and alienation of landes vnder reversion. And be the auld law of this Realme, is called ocker and vsurie, and zit be the samin, was permitted and tolerated. *Lib. 3. c. 6.* Quhidder the commoun forme of wad-setting of landes now vsed vnder reversion, is leasum or vnleasum. *vid. Ias. in L. cunctos populos, C. de summa Trinitate. Et Ches. in Consuetud. Burgund. Rub. 5: §. 1. 2.* In auld times, I finde that quhen landes war wadset, *nomine pignoris*, or *ad immobile vadium*; The profites and rentes thereof were given and disponed bee the donalier, to the byer, for some certaine reasonable causes, sik as, *pro consilio, vel auxilio impensa, vel impendendo*; to the effect, that as the byer bruikis the landes, *ex dispositione legis*, Swa he micht haue richt to the profites thereof, *Ex pacto & conventione hominis. vid. Reversion. vid. Sterlingus, vid. Meri-gage.*

VADIARE *duellum. lib. 4. c. 2. A vadij datione*, to enact battell, as in the English lawes, be giving of pleges, baith bee the persewer and defendar, before the justice and his deputes. The persewer is said, *vadiare duellum*: Quhen after leaue asked and obteined from the King, hee offeris to proove in plaine field, al to be trew, quhilk he affirmis, & to that effect, offeris ane wad or pledge: And the defendar is vnderstand to *vadiare duellum*, quhen he denyis all quhik is spoken bee the persewer, and affirmis the samin to be false and vntrew; and thereto offeris his bodie to fight with him; and ane wadde or pledge to that effect. *De iudic. c. 61. c. 84. Molinæus stil. cur. Par. part. 1. c. 16. Et author tractatus de Corona, Appellatus (inquit) defendet latrocinium, feloniam, & totum factum per patriam, vel per corpus suum, secundum electionem suam, prout curia considerauerit, aut vardauerit, Si autem elegerit se defendere per corpus suum: vadietur inter eos duellum. Et appellatus det Vadium defendendi, et appellans det vadium disrationandi.* Bot *Philippus Pulcher*, King of France, discharged all singular combattes, and all finding of pledges there-anent. *Molinæus. D. part. 1. §. 10. De duello*, in this realm, the appealer & defender castis their glooues till vther, quhilk representis the finding of the pledge.

VAGABVND, is called properlie, ane quha hes na certaine dwelling place. *Guido Papa quæst. 202. Per Gl. 1. & Bart. l. §. 1. Prætor ff. de damno in facto.* Quhilk is verie speciallie declared in the act of Parliament. Ia. 6. p. 6. 20. Octob. c. 74.

VARDA, ane French word *Garde*, custodie or keiping: For we vse the letter W. quhair the French men vse the letter G. As Wardaine, for Gardiane, Warderobe, for Garderobe: Warrenne for Garenne. And the warde custodie, and keiping of the aire; haldand his landes be service of ward and relieue, perteinis to his immediate superiour, quhilk is conforme to the Lawes of *Normandie. Lib. 5. c. 10.* Quhair-anent thir rules after following, suld be obserued, and worthie to be noted. The warde and custodie of lands, halden be service of warde and relieue, perteining to ane aire, being *Minor*, and of lesse age; aucht, and suld perteine to the Ouer-lord and superiour of the saidis landes, quha within the time of

The ward perteinis to the superiour

the

of the warde, may preſent Eccleſiaſtical perſones to Kirkes vaikand: ſuld ſuſtcine honeſtlie the aire: and ſuld nocht onelie pay the debtes, aucht and be the defunct: Bot alſo aske and craue all debtes auchtand to the defunct, or to the aire, and perſew and defend all actiones competent to him: Bot he may nocht deſtroy, nor annalie ony parte of the landes. *Lib. 2. cap. Plenam 42. c. Reſtituerit. 44. vid. Relevium. vid. Hawbert.*

Touching the cuſtodie and keiping of the perſon of the aire of ward landes; or of ony vther landes, or quhatſumeuer maill or ſemaill, gotten or borne in lauchfull mariage; the ſamin perteinis to the mother, after the deceaſe of the father, vntill the bairne be of the age of ſeven zeires compleit, conforme to the commoun practicque of this realme, and the civil law. *L. 1. & Tot. Tit. ff. vbi Pupil. educar. debeat.* The keiping of the bairnes, perteinis to the mother.

For be the Law of this realme, grounded vpon the Climacterick zeirs of *Septenarius & Ternarius*: That is, of ſeven and three zeires; there is three kindes of age. The firſt is of ſeven zeires, during the quhilk time, the bairnes ar in cuſtodie of their parentes. The ſecond is, of fourteene zeires, within the quhilk it is not leaſum to marie. The thrid is, of twentie ane zeires; after the quhilk time, ane aire may enter to his landes, annalie and diſpone the ſamin, as he pleaſis. And before the quhilk time na perſon may be indited to the juſtice aire, or accuſed of life and lim. *Leg. Foreſt. cap. Nota quod. 15.* iij. kindes of age

The keiping of the aire, being *Minor*, haldand Landes of the King, perteinis to him allanerlie, albeit the ſaid aire haue vther ſuperioures of vther warde landes, elder and prior in time to the King: *Quia rex nullum poteſt habere parem, multò minus ſuperiorem in ſuo regno.* Bot gif ane aire haldis landes, *nomine Burgagij* of the King: And vther lands *nomine warde & relevij*, of ane vther ſuperiour, prior, or poſterior to the King; the cuſtodie and keiping of the ſaid aire, perteinis not to the King, bot to the ſaid ſuperiour: *Quia ratione Burgagij Dominus Rex non præfertur alijs Dominis capitalibus in cuſtodia. Lib. 2. c. Notandum. 45.* The keiping of the aire, perteinis to the King

After the outrunning of the ſeaven zeires, and the aire beand of that age, haldand landes of warde of ane ſuperiour, and haueing na landes be reaſon of warde of the King: The ſuperiour ſuld be preferred, anent the keeping of the perſon of the aire, to the mother, gud-ſchir, tutour, zea, to the King himſelfe, and all vther perſones. The ſaxteeneh of Iulij. Ane thouſand, fiue hundreth, threttie twa. *Penult.* Iulij. Ane thouſand fiue hundreth, threttie twa zeirs. The Abbot of *Abirbrothok*, contrair, *Marioun Forbes.* Twentie aucht of Iulij. Ane thouſand, fiue hundreth, twentie nine zeirs. *Iames Sandielandes of Calder*, contrair, *Edward Sinclar.* The keiping of the aire, perteinis to his ſuperiour

The cuſtodie and keeping of the perſon of ane aire, haueand landes halden of diverſe ſuperioures, bee warde and relieve, perteinis to the eldeſt ſuperiour, to quhome the firſt homage was made: Or of quhome hee hes the eldeſt and firſt infeftmente, or forme of halding. For al-be-it ilke ane of the ſuperioures hes the warde of the The eldeſt ſuperiour is preferred to al vthers

landes

Landes halden of him selfe: Zit concerning the keiping of the person of the aire, the principall and eldest superiour, is preferred to all vtheris, *Lib.2.c.Restituere.44.*

The superiour is preferred to the tutour.

The keiping of the aire havand lands blenche, or in few-ferme, and also wardlands, perteinis to the superiour, be reason of the ward, and not to the tutour, havand intromission with his blenche, or fewlands. *28. Ianuar. Patrick Hepburne*, contrair *Elizabeth Ker.*

The keiping of the aire, followis the richt of the mariage.

The keiping of the aire, suld not be given to his appearand aire.

The end of the warde.

Gif the superiour, havand the richt and title to the warde and mariage of ane aire; disponis the warde to ane donatar, and the mariage to ane uther: The donatar, to the mariage allanerlie, suld be preferred in keiping of the person of the said *Minor*, to the vther donatar of the ward, and all vthers: *Quia ius maritagij est personale & sequitur personam.* The keiping of the aire, suld never be committed to him, quha may claime, or claimis ony richt to his landes and heretage: Or may immediatly succeede after him thereto. *Lib. 2.c.hæredes. 47. Hac enim ratione illi posset præberi occasio captandæ mortis ipsius hæredis, quod est periculosum & impium.* Be the Laws of this realm, the aire mail, & al his lands halden ward, ar within ward & keiping of his superiour, vntil he be of the age, of xxj. zeirs; And the aire femall, vntill sche be of the age of xiiij. zeirs. *M.p.3.c.5.lib.2.c.39.de iudic.c.65.c.121.* Because the landes perteining to the aire maill, ar subject to the King, or vther superiour be service; quhilk the *Minor*, bee reason of his les age & zouthhead, cannot do. And therfore the King or superiour, wantand the service, hes recours to the land: that he may bee served be the profites thereof, takin vp to his awin vse; or be ony person to quhome he pleasis to dispone the samin, vntill his vassall be of perfite age, and able to serve. And the aire femail is in the warde and keiping of hir superiour, vntill sche be fourteene zeires of age, as said is. For suppose ane woman of twelue zeires of age, be the civill Lawe may marie ane husband; zit be the Law of this realme, sche may nocht marie, vntil sche be fourteene zeires compleit. At the quhilk time, sche may lauchfullie marie, with consent of her superiourr. *Lib.2.cap. Mulier.48.cap.in Custodiis.90.* And therefore sche being subject to her husband; It is not reason sche suld be also subject to the warde of her superiour; and consequentlie vnder twa wardes, and twa findrie severall powers. Mair-over, sche being maried, with consent of her Over-lord; her husband may doe sik service, as suld be done to him be the possessour of the landes: quhilk is conforme to that quhilk is written be Doct. *Thomas Smith*, of the commoun weil of England. *Lib.3.c.5.c.8.*

VARDA *Curia, quoniam attach.c. vbi aliqua 10.c. in omni.18.c. nullus. 20.* The interloquutor or decreet of the court: *Curia dicitur vardare, considerare, pronunciare*, in this forme. The Court counselled, and advised, And *I. N.* Soytour of it, be their informationes sayeth, that this Court coũselles & I. award, that *N.* is in ane defalt for his absence this day. The like form is vsed in the daily practicque, quhen the judge or clerk, be the

mouth

mouth of the officiar or dempſter decernis and adjudgis onie perſon to be in ane vnlaw, for abſence or ony vther cauſe. & *lib. 2. c. vlt.* that quhilk is called *veredictum aſſiſæ*, in the ſamin place, *in libro Cavbreith*, is called the waird, veredite, or deliverance of the aſſiſe. *Veredictum.*

VARENNA, ane French word, ane *Garene*; That is ane place quhilk is dyked & incloſed for beaſtes, cũnings or vthers, *quo. attach. Cap. 29. Mod. Ten. cur. Cap. 21.* In latine *Paradiſus.* And the keiper of ane cunningair or cunnings, is called an *Garenter. Infeodatus in liberam varennam*, is nocht meikle different from infeftment, *in liberam foreſtam.* The quhilk kinde of infeftment of auld is given to the Laird of *Roſling* his predeceſſoures, of the barronie of *Pechtland.* *Paradiſus*

WARE, *wair* of the ſea, ane word vſed in ſindrie infeftmentes, in latine *alga maris.* As in the latine proverb, *abiecta vilior alga.* He quha is infeft therewith, may ſtop and make impediment to all vther perſones, als weil within the ſloud marke, as without the ſamin, to gather wair, for mucking and guding of their landes. Or to gather wilkes, Cokles, Lempets, Muſſels, land-eiles, ſmall fiſh, or baite, vpon the ſand or craiges, foreanent his landes. 24. Maij. 1549. The town of *Carrail*, contrar *Griſſell Meldrum.* Vther waies gif onie perſon be nocht infeft with ſik priviledge, he may na waies forbid, trouble or moleſt the King, or onie of his lieges to doe the premiſſes: Or to win ſtaines, quarrell, or to exerce onie vther induſtrie to their awin proffite and commoditie, within the ſloud marke of the ſea, *quia vſus maris eſt communis omnium. 29.* Iulij. 1500. The King, contrar the laird of *Seafeild. Ware* cumis fra an auld French word *Varech*, vſed in the lawes of Normandie. *lib. c. vlt.* Quhilk ſignifies onie gudes or geare, caſſen out be the ſea to the land, quhilk properlie we call the wrak of the ſea. *Varech.*

VASSALLVS *quaſi baſſallus, inferior ſocius.* From the French *Bas*, as *plus Bas*, in latine *inferior.* And the Dutch word *Geſel*, in latine *ſocius.* For the vaſſall is inferiour to his maiſter, becauſe he ſuld ſerue and reverence him. And zit he is in ane maner companion to him, becauſe ilk ane of them is mutuallie obliſhed til vthers. *Vid. affidatio*, & *Cuia. lib. 1. de. feud.* writis that *leudes, leodes, fideles, homines noſtri, feudatarij, miniſteriales, beneficiarij, beneficiati, vaſalli*, almoſt ſignifies ane thing: And *vaſallus*, in Latin is *cliens.* Becauſe ſik relation is betuixt *dominus & vaſſallus*, as is betuixt *patronus* and *cliens. Molinæus in ſtil. cur. parl. c. 16. pag. 48.* Albeit *Cuiacius* affirmis the ſamin to be monie wayis different. And ane baſe infeftment is quhen the vaſſall annalies his landes, halden of himſelfe and his aires, quhilk is ane inferiour, private or ſubalterne infeftmente. In the lawes of the fewes *vaſſallus* is called *fidelis, quia fidelitatem iurat*, he ſuld ſwear to be faithfull and trew to his maiſter. Amanges vaſſalles, the firſt place of dignitie is given to them quha are *Duces, Marchiones, Comites*, and are called *Capitanei regni.* The ſecond is granted to barrons & vthers of like rank and eſtaite. And are called *Valuaſores maiores.* The thrid is of them, quha ar called gentilmen, or Nobles, haldand of barrons, quha likewiſe

may haue vnder them vassalles, also gentilmen: For ane gentilman may hald of ane vther. And sik vassalles haldand in chiefe of barrones, ar called *valuassores minores*. And they quha haldis their landes of them, are called *vassalli, valuassini seu minimi valuassores. lib. 1. de feud. Tit. de natura feudi. §. 1.* Bot in the lawes of this Realme, they quha haldis of Barrones are called *milites*, and they quha haldis of them are called *subuassores. vid. Amerciamentum, vid. Baro, & Iacob. Cuiacium, lib. 2. de feud. Tit. de nominibus vassallorum.*

valuassores minores
Valuassini milites.
subvassores

WAIFE beast *pecus vel animal aberrans*, quhilk wanders and wayers without ane knawen maister, quhilk being fund be onie man, within his awin boundes, he suld cause the samin to be proclaimed, diverse and sindrie times vpon mercat dayes, at the paroche Kirk, and within the Schireffedome. Vtherwaies gif he deteinis the samin, he may be accused for thieft thereof. And it is leasum to the awner of the beast, to repeate & challenge the samin within zeir and daie. *quon. attach. c. eschetæ 30. vid. Toscheoderach.* In the lawes of France, it is called *espaue, quo significatur omne illud quod oberrat. Chess. in consuet. Burgũd. Rubric. 1. §. 1. Verb. Espaues.* In latine *res pro derelicto habita. l. falsus. 44. ff. de furt.*

Espaues.

WECHTES, measures and diverse kindes thereof. *vid. Serplath.* Reade likewaies *assisam regis Dauid, De ponderibus & mensuris.* Ia. 1. p. 4. c. 68. 69. 70. Ia. 1. p. 3. c. 57. 58. Ia. 6. p. 11. c. *vlt.*

VENYSOVN, ane worde vsed in infeftmentes, *a venando seu venatione*, and likewaies commonlie vsed in the lawes of England, and signifies licence and power to hunt, take, and slay, of the Kingis venison within his Parkes, and Forrests. Quhilk vtherwaies is nocht leasum, bot is sharplie punished with ane grievous fyne, or be banishment or prison. *leg. forest. c. 91.* Quhilk is conforme to the lawes of England. *Anno. 9. Heñr. 2. c. 10.* Bot be the dispositiõ of the Forrest lawes, it is leasum to ane Erle, Bishopp, or Barrone, cummand or returnand, throw the Kinges Forrest, at his commãd, to take ane, or twa beastes, be the sight of the forester, gif he be present: and vtherwaies he sall blow ane horne, that he appeare nocht to take the samin thiefteouslie. *leg. forest. c. 90.*

VERD, vert, from the latine *viride*: ane worde vsed in Charters and infeftmentes, and also in the English lawes quhair it is called *Grenehue*, and signifies power to cut greene trees or wood. And being committed be them quha hes nocht power to doe the samin, is punished be the foresters, or vierders, quha are called *Viridarij*, in the Lawes of Normandie and England. Be the auld law of this Realme all forrestes commonly perteined to the King: and the richt of Forestarie, was given and disponed in thir wordes, *in liberam forestam*, as is exponed in the word *Foresta*. And ane of the priviledges or liberties, that is *potestas secandi*, licence to hew or cutte greene wood, was granted be the King be infeftment, and disposition conteinand *Verd.* Quhilk libertie the King may grante within his haill forrest, or onie part thereof, to onie person for fewell, or fyre, bigging, or for onie vther particular vse, quhilk person may nocht abuse the

Grenehue.
Viridarij

the ſaid forreſt or wood, after his awin appetite and will, bot at the ſight and diſcretion of the forreſter, and vther officiares; or according to the forme and maner ſet down, and limitate in his infeftmente and gift, as writis, *Iohn Pappon. lib. 14. Tit, 3.*

Secondlie, this word *verd*, may be taken for power and licence of paſturage within the Kings forreſt, granted to him quha is infeft therewith quhilk in the Engliſh lawes is called, the commoun of Herbage, and of vther thinges in the Kinges forreſt, perteining to them quha are accuſtumate to haue the ſamin. *Cart. de. Foreſt. c. 1. Mag. Cart. anno. 9. Henr. 3. c. 8.* and juiſtiment, herbage, *agiſtamentum & herbagium*. In latine, *jus paſcendi pecoris*, is quhair an tenent hes right given to him of the feiding, graſſing, or paſtouring of his cattel within an park or onie vther ground incloſed.

VEREDICTVM *aßiſa. vid. Proporcitas, vid. Varda.*

VERGELT, an *Saxon* or Dutch word, from *Ver, id eſt vir vel homo, et Gelt, pecunia ſiue compenſatio*, as *vergelt furis* is 30. kye. and ane quoyach. *lib. 4. c. de vnoquoque. 17.* Or 33. kye. *Stat. Alex. c. de vno quoque. 34.*

VILLENAGIVM, *a villano*, ſklaverie or ſervitude. *lib, 2. c. Conſequenter. 13. vid. Bondagium.*

VISNETVM, from the French word *voiſin*, nichtbour, *quaſi voiſinetum* or *Vicinetum*, from *vicinus*, ane quha dwellis neare vnto ane vther, or in the foure halfes about, from the quhilk cummis the French word, vſed in the Engliſh lawes *vicinage*, and in the lawes of this Realme, *Aßiſa de vicineio*, is ane aſſiſe of nichtbours, or of the foure halfes about, *vid. Aßiſa.*

WHITSONDAYES ſet. Ia. 2. p. 14. c. Or *Whitſondayis* making. Ia. 2. In the ſamin par. c. 90. Vtherwaies called *Whitſondayes* ſtyles. Quhilkis wer certaine conſtitutions and ſtatutes quhilkis freehalders, baith ſpiritu all and temporall, and ſpeciallie conventes of Abbayes, and religious places, maid betuixt them and their tennentes before *Whitſondaie*, for ſer uice to be done to them, and better labouring of their landes, and payment of their dewtie.

VNLAW. *vid. Amerciamentum. vid. Tort.*

VNCTVM *porcorum*, ſwines ſeame or fatnes. *leg. burg. c. ſi quis ſcienter 71. Ab vngendo*, becauſe it is profitable for vnctiones and ſmeering.

VOTH ſignifies out-lawrie, *vtlagium*. And in our auld Scottiſh langage ane *Vothman*, is ane out-law, or ane fugitiue fra the lawes. Mairover *Vouth*, ſignifies, perſued, calling, or accuſation, from *Voucher, id eſt Vocare*, vſed in the auld French & Engliſh lawes,

WRANG *et* vnlaw. *vid.* Tort. To denie wrang & vnlaw, is quhilk the defēdar denyes that quhilk is objected to him, or quhairof he is accuſed, & zit confeſſes that he hes done vtherwaies then he aucht to doe, & ſwa hes not done his deuty for the quhilk he is reddie to make amendes and ſatiſfie the partie offended. *leg. burg. Cap. 101.*

WREK, of the ſea, ane word ſpecified in the lawes and ſindrie infeftmentes, quhilk ſignifies power, libertie, and prerogatiue competent to the King, or to onie perſon, to quhome the ſamin is granted be him bee

infeſtment,or onie vther diſpoſition, to intromet and vptake ſik gudes & geare, as ar ſchipbroken,or fallis to him be eſcheit of the ſea. Quhilk libertie is als competent & proffitable to him quha is infeft with wrek, as it micht be to the King himſelfe gevar thereof,*quia vracta pertinens ad dominum regem et vracta competens vaſſallo, ex donatione regis pari iure eſtimantur.leg.foreſt c.inter antiqua.56.* And in the lawes of England *anno.3. Edwa.1.c.4.* concerning wrek of the ſea: it is ſtatute that quhair an man, andog,or an cat,eſcapes quick out of the ſchip,that ſik ſhip or barg,nor na thing within her, ſalbe adjudged wrek,bot the gudes ſalbe ſaved,& keiped be the ſicht of the ſchireffe,coroner,or the Kinges baillie, & delivered into the hands of ſik, as are of the towne,quhair the gudes were fund,ſwa that gif onie craue the gudes within ane zeire and ane day,after pruiſe,that they ware his awin, they ſalbe reſtored to him without delaie. And vtherwaies they ſall remaine to the King. And the ſchireſes coroners,and baillies of the town,intromettours theirwith,ſalbe anſwerable therefore,to the Kinges officiares,& quhair wrek belanges to an vther then to the King, he ſall haue it in maner abone expremed. And quhaſoever dois vtherwaies,and is attaynt, or convict thereof,he ſalbe impriſoned,and pay ane fine arbitrall to the King,and the damnage to the partie. Siklike be the lawes of England,the King ſuld haue the wrek or eſcheit of the ſea,throwout the Realme,Whailes,& greate ſturgeons taken in the ſea,or els quhair within the Realme. Except in certaine places priviledged be the King *anno.17.Edward.2.c.11.*

VTLAGIVM,*vel vtlagatium*,outlawrie,rebellion,diſobedience to the lawes,baniſhment,or forefaltour. Ia.2.p.6.c.30. For gif the King reſtores *ex gratia*,an man that is outlawed, or forefalted,he thereby recovers nocht his landes,bot be the gud will of his overlord, *quia forisfactū et vtlagationem: D. Rex damnatis ſolet remittere: nec tamen aliena iura querit nec poteſt infringere lib.2.c.forisfactum.55.de iudicib.c.ſi per legem.149.*

Y

YBVRPANANSECA,it appears to be like that,quhilk is called the law of Birdingſek,for in ſū auld authentick buiks it is writtē. *lib.4.c.149 burpan wſeca.h.e. De furto pituli vel arietis,vel quantum cibi,quis portare poteſt ſuper dorſum ſuum curia non eſt tenenda.* Sum affirmis in the Gaſcoin language. *Pana*,to ſignifie *furari*,to ſteill,and *panadour*,to be ane thief,& it appeirs weill. *Seca*,ſignifies an ſeck. In latine *ſaccus*,quhilk word is commonlie vſed in all tunges and languages amangs all people & nationes.

Z

ZARDE. Ia.1.p.7.c.99. Is an kind of meaſure commonlie vſed in England nocht meikle different from our elne,an zairde of land *virgata terra*,in the Britton lawes,is ane meaſure of land quhilk in diverſe places

is

is diverſe, ſumtimes of 20. aikers, ſũtimes of 24. & ſumtimes of 30. aikers.

ZELDE, ane gift or donation. *vid Herrezelde.*

ZEMSEL, of ane Caſtell, the cuſtodie, and keeping of ane Caſtell. *leg. bur. c. 3.* For zeme, in our auld language, is to obſerue and keepe, as quhen in time of ſingular battell, they quha ſtandes by, and behaldes, ar commanded to keepe, & zeme the time of the derenzie, their weapons fra the handes of the appealer and defendour: *In lib. feud*, it is called *feodum Guardiæ*, for *Guardia*, in latine *cuſtodia*, *& Guardiani cuſtodes* to quhome Caſtelles and territories of landes ar committed in keeping, quhome we call wairdanis, as writes, the interpretoures of the fewes, & ſpeciallie, *Zaſius de feudis. par. 12. Nu. 7.* And in this Realme landes annuell-rẽts, or dewties, given for keeping of Caſtelles, are called *caſtelvardis*

FINIS.

ANE ADMONITION TO THE reader tuiching the buikes contenand the

lawes of this Realme, and abbreuiationes vſed *in the treatiſe preceiding.*

I Haue alleadged in this little treatiſe, the firſt word with the number of the Chaptour of ilk buike of the auld lawes of this Realme, written before King *Iames* the Firſt, of gud memorie. Becauſe there is greate diverſitie anent the number of the chaptoures. Swa that thereby, there can be na ſure or certaine allegation. Bot gif the number failzie, the 1. & capitall word, wil be an ſure guide & convoy to the richt place alledged

Leg. Mal. Mack. leges Malcolmi Mackenneth. The lawes made be King *Malcolme* the ſecond of that name, verie gud and proffitable, bot few in number.

Lib. 1. Lib. 2. Lib. 3. Lib. 4. The firſt, ſecond, thrid, and fourth buikes of *Regiam maieſtatem*, maid be King *David* the firſt. Swa called and intituled, from the firſt worde of the beginning thereof, to the imitation of the foure buikes of the Inſtitutiones of the civill lawes; quhilk begins *Imperatoriam maieſtatem.*

Quo. attach. quoniam attachiamenta, ſwa called, fra the firſt word therof. Conteines the Barron lawes, and forme of the Barron courte, written in the time of the ſaid King *David* the firſt.

Mod. ten. cur. bar. modus tenendi curias baronum, an buik writtẽ in Scottiſh languag; quhilk is not of great antiquitie as may be knawẽ be the ſtyll, & language thereof, & is not conteined in the auld buikes maiſt worthie of faith & credite, alwaies it is an interpretation of the buike *quoniam attachiamenta*, maid be ſum mã quha hes eiked & augmẽted ſindrie things profitable

proffitable, for vnderſtanding of the forme of proces vſed, in auld times.

Leg. Burg. leges Burgorum; The lawes of Burrowes, maid in the time of the ſaid King *David* the Firſt, be relation and information of certaine learned men, quhome he ſend to vther cuntries to learne and reporte to him the lawes, and ordinances thereof, quhilk was done be them within the ſpace of twa zeires or thereby, as is plaine and manifeſt bee auld authentik buikes. And it is probable that he hes vſed the like forme and proceeding in making and furth-ſetting of the remanent his lawes.

Stat. Wilh. ſtatuta Wilhelim Regis; Statutes, and lawes, maid be King *Williame*.

Stat. Alex. ſtatuta Alexandri, Statutes and lawes maid be King *Alexander* the ſecond of that name, ſonne to King *Williame*.

Stat. 1. Rob. Br. ſtatuta prima Roberti Bruyſe.

Stat. 2. Rob. Br. ſtatuta ſecunda Roberti Bruyſe. Quhilk ſtatutes and lawes maide be him are co-incident, and for the maiſt parte conteinis the like, or ſamin lawes.

Aſſ. Reg. Da. Aſſiſa regis David: Lawes maid be King *David* the *Bruyſe*, called King *David* the Second: And in ſome buikes ar called, *ſtatuta David Regis*.

Stat. Rob. 3. ſtatuta Roberti Tertij: Statutes maid be King *Robert* the Thrid, Father to King *Iames* the Firſt, quhilkas zit remainis in the Regiſter of this Realme.

Leg. Foreſt. Leges Foreſtarum: The Lawes of Forreſtes, quhairof the author is not knowen to mee.

Iter Camer. Iter camerarij: The Chalmerlaine aire: Quhilk (as ſome alleagis) was written and put in forme, in the time of King *Iames* the Thrid: Albeit the ſamin Courtes, were frequent, and meikle vſed mony zeires before him.

De maritag. De maritagio. Ane little treatiſe, written be ſome private man, and is na-waies authentick. It is ſo called, becauſe the beginning thereof is, *De marito*.

Stat. Gild. Statuta Gildæ, Certaine ordinances and conſtitutiones, touching Burgeſſes, gild-brether, maid and conſtitute be *Robert Durhame*, Maire of Berwick, *Simon Marſchel* and vthers wiſe men, inhabitantes of the ſaid Burgh.

Leg. port. leges portuum, ane treatiſe collected and written be ſum particular perſon, quhilk is nocht authentick, & conteinis ane briefe ſumme and abridgemẽt of the auld lawes, and is ſwa called, becauſe it conteinis the ordinances anent the cuſtomes of ſhippes, paſſand furth of this Realm, or arrivand to the ſamin, laidned with merchandice, & the forme of cuſtomes, baith out-ward and in-ward.

De iudic. De iudicibus; Ane lang and large Rapſodie, collected furth of all the buikes conteinand the civill lawe of this Realme. It is nocht authentick, bot zit verie proffitable for expoſitioun of ſindrie places of the principall and authentick buikes. It is ſwa called bee reaſoun

the

reaſon the beginning theirof is, *De iudice eligendo.*

The Actes of Parliament of King Iames the Firſt, and his ſucceſſours are alleadged be the name of the King or Queene, author thereof. As Ia. for *Iames.* Mar. for *Marie.* p. for Parliament; and mairouer be the number of the Parliament and chaptour.

Decreites given bee the Lordes of the Seſſioun and Councell, are alleadged be the daye, moneth, and zeire of God, in the quhilk they are pronunced, and ſumtime bee the names of the perſewer and defender.

Quhair onie thing is written in the expoſition of ane worde, quhilk may ſerue for the declaration of ane vther, for eſchewing of vnproffitable repetition, I remitte zow from the word to ane vther, be *vid.* For *vide.* and ſwa ſee and reade the expoſition of the ane and the vther: for thereby ze ſalbe mair largelie inſtructed.

FINIS.

PSALMS.

De verborum significatione

THE EXPOSITION OF THE TERMES AND *DIFFICILL WORDES*, CONTEINED IN THE FOVRE BVIKES

of Regiam Majestatem, and vthers, in the Actes of Parliament, Infeftments, and vsed in practicque of this Realme, with diuerse rules, and common places, or principalles of the Lawes.

Collected and exponed be M. IOHN SKENE, Clerke of our Soveraine Lordis Register, Councell and Rolles.

EDINBVRGH,
Printed be Robert Walde-graue Printer to the Kingis Majestie. 1597.
Cum Privilegio Regali.

To the Reader.

I HAVE rather opened and ſchawen ane occaſion to the (gude Reader) to performe this warke, then expouned or declared the ſamin: Being ane mater nocht pleaſand in it ſelfe, nor treated be vthers of before: Gif I haue preaſed to doweill or attempted that, quhilk vthers maie accompliſh and make perfite, the profite and commoditie redoundis to thee, quha at thy pleaſure, maybig vpon this little ground, and fundament. Gif vther waies be errour, or ignorance, I haue nocht ſatisfied thy deſire, and expectation, Sit erranti medicina confeſſio. For ane abſolute memorie, and perfite knawledge in na thing erroneous, is proper to God, and nocht competent to man. Quhateuer I haue done, I did it nocht to offend thee or to diſpleaſe anie man, bot to prouoke vthers to doe better, alwaies for thine awin weil, be warre to reprehend my doinges, flowand from ane benevolent, and gude mind: except thou be aſſured, to be reprehended of naman, quha cummis after the and ſall cenſure thy doinges. I am affrayed of all Readers, for ilk man hes his awin iudgement & opinion, quhairof their is als mony contrarieties, as diuerſities of perſones. Adviſe therefore, & or thou do anie thing raſchlie, gif thou maie tranſact and aggree with all the poſteritie, that albeit thou do alſweill as Homer in his poeſie: nane of them be vnto thee, ſucceſſour or imitatour of Zoilus. ſo great is the varietie of ingines, and inclinations, that nane can be ſure fra reprehenſion. Reade therefore, and mak thy profite of gud thinges. Correct modeſtlie all errours, quhilks are ignorant, and nocht willfull. Eike all neceſſaries omitted. Cut awaie al ſuperfluities adiected. And quhateuer thou do, eſteeme of me, as I do of thee and of al, to quhais knawledge, this my little labour, ſall happen to cum. And ſwa,

Viue, Vale, ſi quid noviſti rectius iſtis,
Candidus imperti: ſi non, his vtere mecum.

56... 654,5

THE EXPOSITION OF THE DIFFICIL WORDES AND termes, conteined in the foure buikes of Re-

IAM MAIESTATEM, & vthers: In the acts of Parliament, *infeftments, & vsed in the practicque of this Realme, with* divers Rules, and commoun places, or principall groundes of the Lawes.

ACTILIA, Armour, Weapons, Harniſhing. Sta. 2. *Roberti Bruyſe.* c. *ordinatum* 27. Quhair it is ſtatute that ilk man havand Ten pounds worth of gudes ſall haue for the defence of his bodie & Realme, ane ſufficient Acton, and baſnet, with gluiſes of plait, ane ſpeir, ane ſword, and quha-ſa-euer hes nocht ane Acton, and baſnet, ſall haue ane ſufficient habirgeon, or ane Irone jack, ane Knapiska of Irone, and gluiſes. Swa that ilk man ſalbe readie *cum actilijs & harneſijs ſuis*, vnder the paine of eſcheit of all his guides, the ane halfe thereof to the King, and the vther halfe to his maiſter, and Lord. *Acton* ane auld Frenche word, *Hocqueton*, quhilk corruptlie is pronunced *Oction*, *ſagum militare*. Sum affirmis *Acton* to be an auld kinde of armour, for preſervation of ane mans bodie, maid of ſteill or Irone, quhilk couered his head alſweill as the reſt of his bodie: Quhairof zit are ſum extant as auld monumentes in the Hie-landes; Bot noucht dailie vſed, or worne. Vthers mair probablie alledgis *Acton*, to be ane forme of armour, quhilk covers ane mans bodie (except his head) downe to his knee, maid of Taffitie, Ledder, or Linnen claith, ſtuffed with caddes, and ſtiked verie thick with threid, or ſilke of diverſe coullers, and partial gilt, with ſpranges or ſtreames of Gold fuilzie; And is commonlie vſed in time of battell vnder the habirgeon, to ſaue ane mans bodie, fra the ſchot of ane arrowe: or fra the hewing of the ſtraik of an ſword. It is an kinde of that abuilzement, quhilk in Latine is called *veſtis virgata, variis virgis ſeu aureis lineis diſtincta, & variegata, vt eſt illud Virgilij Æneid 8. Virgatis lucent ſagulis.*

The paine of them quha cums evil armed to the g hoiſt.

ACTORNATVS Lib. 4. c. *ſiquis defendens* 46. *actor, aliorum negotiorum geſtor*, vtherwaies in the Lawes of this Realme called *reſponſales*, quha makis anſwer for ane vther in judgement, ſpeciallie for the defender Lib. 1. c. *Eſto* 37. Lib. 3. c. *Placita.* 12. *cum ſeqq.* Like as *Procurator* is he quha ſpeaks for the perſewer, as his foirſpeaker. Lib. 1. c. *Reſponſales prolocutor.*

Actor Alſua, *Actoratus*, is he quha dois ony thing in an vther mans

juſtice and his deputes. Iam.6.parlia.11.cap.81. Quhilk ſuld be likewiſe keiped quiet, and reported, as ſaid is, to the juſtice. And dittay being taken vp, vpon ony crime againſt ony perſones: Neither judge, bot the juſtice and his deputes, may mell there-with. Like as the Wardaine on the Bordoures, in his wardaine courte, may nocht intromet with ony thing that perteinis to the dittay of the juſtice aire. Iam.2.par. 11.cap.42.

The portuous

The dittay taken vp, in maner foreſaid; The juſtice Clerke, at command of the juſtice, makis ane catalogue, conteinand the names of the perſones indited: And vpon quhom dittay is given vp, quhilk is called ane portuous. Togidder with ane vther Catalogue, quhilk conteinis the particular dittay, given and taken vp, vpon tranſgreſſoures and malefactours, called the *traiſtes*: Baith the ane, and the vther, is delivered be the juſtice Clerke, to the crowner: To the effect, that all the perſones quhais names ar conteined in it, may be attached, and arreiſted be him to compeir in the juſtice aire, to anſwere to ſik crimes as ſalbe im-put vnto them. Ia.1.p.13.c.139. Ia.3.p.14.c.99.

Traiſtes

Attachementes, arreiſtmēts & formether-of.

The crowner, in making his arreiſtments, ſuld paſſe to the habitation and dwelling place of the perſones, given to him in portuous, and thereafter make proclamation at their Paroch Kirkes, vpon feſtuall daies, and take ſovertie of them, ſick as he will ſtand for to the King. And gif the perſones ſwa arreiſted, be nocht ſtreinzieable; The Crowner ſall arreiſt their gudes, and put them in ſure keiping, to the Kingis vſe: quhill the ſaid ſovertie be founde: Or elſe take their perſones, and put them in the Kingis Caſtell, gif ony bee within the Schire. And gif there be na Caſtell, hee ſulde deliver them to the Schireffe to bee keiped. Ia.5.p.3.c.5.

Arreiſting of fugitiues.

And mair-over, becauſe ſindrie perſones indited, vſis to flie and abſent them ſelues; ſwa that the Crowner cannocht apprehend them perſonallie, to arreiſt them. In that caſe, it is ſufficient that the Crowner cum to the dwelling place of the ſaidis perſones, and make them warning, and charge to compeare in the juſtice aire nixt following, to anſwere to ſik accuſationes of crimes, as ſalbe im-put vnto them. And thereafter vpon the nixt Sabboth daye following the ſaid charge, the Crowner ſal make open and publick intimation of his warning, charge, and premonition, maid to the ſaidis perſones, be their names, in their Paroch Kirkes. Quhilk charges, premonitiones, and intimationes, ſall ſtand to them for ſufficient arreiſtmentes, the ſamin being lauchfullie proven, as effeiris of the Law. Iam.5.p.4.c.33.

And mair-over, gif he cannnocht attache ony man perſonallie, be reaſon of his abſence; he ſuld arreiſt all his gudes moveable, and vnmoveable, to remaine vnder ſure pledges, and to be furth cummand to he King: In-caſe he be nocht anſwerable to the law, before the juſtice *Leg. Malc. Mak. cap. 1.*

The

The Crowner ſall arreiſt at all times, alſweil before the crye of the aire, as after the ſamin, all them quha ar given to him in portuous, be the juſtice Clerke, and nane vthers. Iames. 1. Parliament. 13. cap. 139. Bot all arreiſtmentes, ſulde bee maid before the time of the beginning of the juſtice aire, and ſeate of juſtice, & na waies after the ſamin. Ia. 3. par. 7. ca. 58. All perſones charged to compeir, in the juſtice aire, ſuld be attached and ſummoned be the auld law of this Realme, vpon the ſpace of fourtie daies at the leaſt. *Aſſ. Reg. Da. c. ad Summonitiones.* 19. And albeit na man ſuld be attached or arreiſted, except dittay be given vp vpon him. *Stat. Alex. c. 2.* Neverthelleſſe, in attachementes, or arreiſtments of ony perſon indited, na mention ſuld bee maid of the cauſe or crime, for the quhilk he ſuld be indited; bot the ſame ſuld be concealed be the clerke and na waies revealed be him. *Stat. Wilh. c. ſtatuit etiam 6. leg. Foreſt. c. Si aliquis 52. quoniam attach. c. Si aliquis 49. Aſſ. reg. Da. c. 6.*

All the indwellers within the towne or village, ſuld concurre and aſſiſt the crowner, in attachement or arreiſting ony malefactour to compeir in the juſtice aire, to vnderly the law. *Stat. Alex. c. 2.* And ſik-like, quhen the crowner receivis his portuous, conteinand the name of ony perſon indited, quha wil not obey him, or quhom he dare nor, nor is not of power to arreiſt; he ſall paſſe to the Lord of the Barronnie, quhairin that perſon dwellis: Vtherwaies gif he dwellis not within ane barronie, he ſall paſſe to the Schireffe of the Schire, & require them to be borgh and ſovertie, to enter the ſaid perſon to the juſtice aire; quhilk gif the barrone or Schireffe refuſis; the Crowner ſal require them to ſend their officiares, and ſufficient number with them, to fortifie and ſupplie him, in making of his arreiſtment, taking and keiping of the ſaid diſobedient perſon, quhill he be brocht to the Schireffe, to be keiped be him, vntill the time of the Iuſtice aire. Iam. 3. p. 14. c. 99. Mair-over, the crowner ſall bring all perſones arreiſted be him, quha hes not, or may not finde borrowes to the Schireffe of the Schire, quha ſall receiue him in ſuertie, and firmance, vpon the Kingis expenſes; and quhairit failzies, on their awin gudes, quhill the nixt juſtice aire, and there preſent them to the juſtice. Ia. 3. p. 14. c. 102.

Arreiſting of diſſobedient perſones.

The Crowner, or makers of the attachements and arreiſtments, ſuld not intromet, or carie awaie ony gudes or geare, perteining to the perſones attached: Bot the Lord, or officiar of the towne, ſall ſuſteine them reaſonablie, vpon the expenſes of the ſaide perſon, be the ſpace of ane day, and ane nicht. *Stat. Alex. c. 2.* And gif the ſaid perſon cannot bee perſonally apprehended: The crowner may remaine in his dwelling-houſe ane day and ane nicht, and ſuld be ſuſteined with twa ſeruandes, and vther twa as witneſſes, and his clerke ſuld haue twa ſchillings, and ſa may nocht take any mair of the gudes and geare, perteining to the ſaid perſon attached, albeit he be abſent. *leg. Malc. Mak. c. 1.*

The crowners expenſe.

Attachements & arreſtments maid be Crowners and ſerjandes, may be provin be them and witnes. *Ia. 3. p. 7. c. 52.* That is, be the aith of the

Probation of arreiſtmentes

Crowner, & ane witnes cõforme to the auld consuetude. I. 5. p. 4. cap. 33.

The crowner sall haue for his fee, for ilk man amerciat or componand, ane colpindach, or threttie pennies. For him that is clenged be ane assise, the crowner sall haue na thing. For ane man filed or condemned, the crowner sall haue all the dantoned horse not schod. *Leg. Mal. & Mac. c. 1.* Quhilk is to be vnderstand, of dantoned Horse, depute to wark, and not to the sadle; that was ne ver schod, nor vsed to schoone. I. 3. p. 14. cap. 113. The crowner suld haue all the cornes lyand in binges & mowes, casten and broken, al the in-sight, vtensile, and domicile, within the inner part of the house: That is, within the cruik hingand vpon the fire. And all and sindrie scheip within twentie: And all the swine and Gaites with in ten. *Leg. Mal. Mak. c. 1.* Attachements and arreistmentes being maid, or directed to be maid; or in the time of the making thereof: The justice generall, direct is ane charge, called *præceptum itineris Iustitiariæ*, to the Schireffe and his deputes, in maner and forme following. *Wilhelmus Iustitiarius domini regis generaliter constitutus, Vicecomiti & Ballivis suis de E. salutem. Quia ordinamus iter iustitiariæ domini nostri regis, Deo duce, tenendo de tota ballia vestra, apud E. Decimo die mensis N. proximè futuri, cum continuatione dierum. Vobis præcipimus & mandamus, quatenus summoneatis, seu summoneri faciatis, legitimè & coram testibus legalibus, omnes Episcopos, Abbates, Priores, Comites, Barones, & ceteros liberè-tenentes, totius balliæ vestræ qui sectas debent. Ac etiam omnes illos, qui nihil nisi suas debent præsentias, qui de domino nostro regetenent in capite. Quod compareant coram nobis seu deputatis nostris, pluribus aut vno, dictis die & loco, cum continuatione dierum, ad perficiendum, subeundum, & determinandum, id quod in hac parte, iuris ordo postulat. Præmoneatis etiam, omnes indictatos, tam de novo, quam de veteri, & suos plegios, qui nondum coram nobis comparuerunt, & indicium subierunt, ac etiam illos, qui prosequi habent, vel defendere in dicto itinere, secundum formam iuris. Quod compareant coram nobis, seu deputatis nostris, pluribus, aut vno, dictis die & loco, cum dicta continuatione dierum, ad perficiendum & subeundum, id quod in hac parte iuris ordo requirit. Et sitis vos Vicecomes, & Ballivi vestri, ibidem, dictis die et loco, cum dicta continuatione dierum, habentes vobiscum summonitionis, ac præmonitionis vestræ testimonium, & hoc breue. Provideatis in-super pro expensis nostris, benè & competenter. Quas vobis, in vestris primis computis, de exitibus Iustitiariæ reddendis, vobis faciemus plenius allocari. Et hoc nullatenus omittatis, sub omni pœna, quæ competit in hac parte. Datum sub sigillo nostri officij Iustitiariæ.*

The crowners fee.

Of persons quha suld compeir in the justice aire.

Præceptum itineris Iustitiariæ

Quhilk precept & command, is conforme to the Lawes of this realme: Because all free-halders, haldand lands in chiefe of the King, within the Schireffdome, quhair the justice aire is halden, suld compeir & be present all excuse set aside, except the same be of seiknes, the kings service, or tinsell of landes and heritage; To certifie and informe the justice and his deputes, in sik question and doubtes, quhilk incidentlie arisis, as emergent, and of before could nocht be fore-seene, nor knawen. *Ass. reg. Da. c. stat. 18. quoniam attach. c. stat. 77.* Sik as Bischops, Abbots, Priors,

Assessours and counsellers

ors, Erls, barones, & vther free tennents, being ſummoned & warned to that effect, *quoniam attach. c. ad ſummonitiones 78. l. 4. c. Stat. 19.* & they being lauchfullie warned and not compeirand, incurris, the paine of the vnlaw of the court. *Li. 4. c ſtatutum. c. 19.* And may be punished as favourers of the tranſgreſſours, and airt & pairt with them. *Ia. 4. p. 3. c. 29.* And they and all vther the Kingis lieges, ſuld cum to the juſtice aire, and to all vther courtes, in ſober and quiet maner; and ſuld not bring with them, maa perſones, then ar dailie in their houſhald and families. And being cum to their Innes and ludgeing, ſuld laye their armour and weapones from them, and vſe na weapons, bot their knife. Ia. 2. p. 12. c. 83. Mairover, all Lordes, Spirituall and Temporall, Barronnes and vtheris, cummand to the juſtice aire, ſuld na-waies mainteine, fortifie, ſupplie, defend, nor be Advocattes, nor ſtand at the Bar, with manifeſt traitoures, men ſlayers, thieues, rievers, nor vther treſpaſſoures, nor perſones perteining to themſelues, or vtheris: Saifand, it ſalbe leaſum to them in ſober waies, to ſtande with their kin, and friendes, in defenſe of them, in their honeſt actiones. Ia, 3. p. 14 c. 98. Quhen the juſtice aire is to bee halden vpon the Bordoures, The Wardaines, within their Wardainries, and their deputes, with the free-halders of the Schireffedome, being warned thereto be the Schireffe, be open proclamation, ſuld convoy the juſtice and his deputes, to the place appoynted for halding of the Court: And accompanie them, in-during their reſidence, and vntil they be out of the boundes of their Schireffedome, and received be the nixt Schireffe. Ia. 6. p. 11. c. 81.

In the juſtice aire, ſuld compeir all perſones attached, and arreiſted, conforme to the dittay given and taken vp vpon them; quhairof, ſome were arreiſted of before, to haue compeired in the juſtice Courte preceeding, alreadie ended, and expired, and compeired nocht in the ſamin: quhais names ar given to the Crowner, to be of new attached, and arreiſted, to the aire following, as of before: Vthers ar of newe indited, vpon quhom nae poynt of dittay was taken vp, in ony time bygane, quhais names ar comprehended in ane Catalogue, called portuous. All the foreſaidis perſones indited, baith of auld and of new, ſulde be attached and arreiſted be the Crowner, to compeir and vnderly the law, the time of the juſtice aire, as is manifeſt be the precept foreſaide, direct be the juſtice generall, to the Schireffe. Perſones attached.

All perſons arreiſted, that may be apprehended, the time of the aire, in the Tolbuith, or in the town, quhair the iuſtice is, ſalbe taken and delivered to the juſtice, to be juſtified for their crimes and treſpaſſes. Swa that the arreiſtment be maid before the time of the beginning of the juſtice aire, and ſeate of Iuſtice. Iam. 3. par. 7. cap. 57. And quhair landes lyand in ſindrie Schireffdomes, ar annexed & vnited in ane Barronnie: The inhabitantes thereof, ſall anſwere in the juſtice Court, quhair the landes lyis, and the Lorde, or proprietar of the landes annexed, giuis preſence or ſervice, in the court of the Schireffedome, within the quhilk Inhabitants of annexed landes.

the barronnie lyis, to the quhilk the landes ar annexed. Ia.4. par.6.c.93. For in this caſe, reſpect and conſidderation is had to the naturall ſituation of the landes, and to the juriſdiction, within the quhilk they lye: rather nor to the imaginar, and civill forme of lying, of the landes be annexation.

ſtewardries & Bailleries

Attour, all inhabitantes of ſtewardries and baillieries, ſall cum to the head burgh of the Schireffedomes, quhairin they lye: And within the quhilk head burgh, the Kings juſtice aires ar halden. I.6.p.11.c.81.

The judge

The judge in the Kingis juſtice aire, is the Kingis juſtice generall, or the Kingis baillie, in his regalles, havand lauchfull power and commiſſion granted to them. Ia.2.p.3.c.9. For the King, or the juſtice generall, may make aucht deputes; quha with ane depute of the Theſaurar, and ane vther of the juſtice Clerke, ſuld paſſe ſeverallie throw the aucht quarters of the realme, and hald juſtice Courtes. I.6.p.11.c.81.

The juſtices expenſes.

The juſtice generall, ſuld haue for his ſuſtentation, ilk day of the aire, fiue pound. Like as the juſtice Clerke ſuld receive for ilk man clenged, be ane aſſiſe, and drawen furth of the rolles, foure pennies. And for ilk man amerciat, or cõponand, ij.s. *Leg. Mal. Mak. c.2.* For ilk Actorney & commiſſion; twa ſhillinges. For ilk man quha producis ane remiſſion, twa ſhillinges. For ilk man that cummis in the juſtice wil, twa ſhillinges. For ilk man convict and filed, twa ſhillinges. For ilk letter of witneſſe, ſex ſhillinges, aucht pennies.

The Schireffe. The crowner.

The Schireffe ſuld be preſent, as he quha is warned be the juſtice precept, to anſwere to all the poyntes thereof: And touching the execution of his office, togidder with the Crowner, quha ſuld anſwere for his attachementes and arreiſtmentes, & verification thereof: And the Schireffe, with the Crowner, ſuld thoill ane aſſiſe, the laſt day of the aire, anent the vſing and execution of their offices, to quhome juſtice ſuld be miniſtrat, as they ſall be founde innocent, or culpable. Iam.3.parlia.14. cap.103.

The forme of the courte.

The day of compeirance being cum, to the quhilk the juſtice aire is cryed and proclaimed; The juſtice and his deputes, ſuld compeir with all vther perſones, charged and commanded to concurre and aſſiſt with them. At the quhilk time, the ſutes ſuld be firſt called, with their Lordes. For albeit the Suitures compeir, nevertheleſſe, their Lords and maiſters ar obliſhed likewiſe to compeir, and giue preſence to the juſtice in his aire: They being lauchfullie ſummoned, & charged to that effect, be open proclamation, and be the juſtice precept abone written.

The ſute of court

Commiſſion.

2 The Commiſſion and power given to the juſtice, ſuld be produced and red: And gif the Commiſſion be given and granted to maa perſones nor ane conjunctlie: They ſuld be all preſente; vtherwaies it is na lauchfull courte. Bot gif they be conſtitute conjunctlie and ſeverallie: It is ſufficient that ony ane of them be preſent. And mair-over, the juſtice may nocht make and conſtitute deputes or ſubſtitutes vnder him, except he haue ſpeciall power in his commiſſion, to do the famin.

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lib.4.c.ſi vnus.27. Thirdly the judge ſuld begin and fenſe the court, conforme to the common ordour and conſuetude vſed and obſerved. Ia.6. par.11.c.81. Quhilk ſuld be done at elleven houres before noone. Ia.6. p.11.c.86. Fourthlie, the court beand affirmed, the dempſter ſuld be called and cauſed to be ſworne, that he ſall leallelie and trewlie, vſe and exerce his office. Fiftlie, the ſuites ſuld be called. I.6.p.11.c.81. zit againe as of before ilk man, twiſe with their lords & maſters, & the abſents decerned to haue failzied, & therefore ſuld be vnlawed, & gif baith the ſuiter and his Maiſter be abſent, ilk ane of them be thẽſelues ſuldbe amerciat. The fenſing of court. The dempſter. The ſuites.

Sextlie, the aſſiſouris being ſummoned be ane precept direct be the juſtice to that effect, ſuld be called, ilk perſone vnder the paine of fourtie punds, and the juſtice may cheiſe aſſiſe ane or maa, as he pleaſis, of the beſt and maiſt worthie of the cuntrie, before quhom the haill accuſation, reaſoning, writtes, witneſſe, and vther probation, and inſtruction quhat-ſum-ever of the crime, ſalbe reaſoned and deduced in their preſence; and alſo in the preſence of the partie accuſed, in face of judgement. Ia.6.p.11.c.90.91. And it is to wit, that he quha givis vp dittay vpon ane vther, ſuld not paſſe vpon his aſſiſe. Ia.1.p.3.c.50. The aſſiſe.

7 The juſtice ſuld proceede in his court, and put the offenders, gif ony be alreadie in priſon, to the knawledge of ane aſſiſe; and miniſter juſtice vpon them, as they ſalbe founde innocent, or culpable. Iam.6. p.11.cap.81. The perſons attached.

8 He ſall call thereafter the pledges, and cautioners of perſones attached, quha faund ſovertie before the juſtice ony time preceeding, at ony particular diet, or court, to compeir the thrid day of the aire, or ſooner, vpon fifteene daies warning. Ia.6.p.11.c.81. Pledges for entres of vthers.

9 This being done, the clerke ſall viſit and conſidder the haill rolles, and journell, and call all them quha ar abſent from the aires preceeding, Vpon quhais heades and names is written, *prima dies, ſecunda dies, tertia dies*: Be the quhilk, he vnderſtandis, fra quhat aire or court they were abſent. And that they may be therefore amerciat, ilkane of them bee them ſelfe, be reaſon of their abſence. And gif the ſaidis perſones, nocht compeirand of before, now compeiris and ar preſent: The clerke ſall luik the auld dittaies and rolles, and accuſe them, conforme thereto, in the beſt maner he may gudlie. And gif there be na particular poynt of dittay, or accuſation; he ſall lay commoun dittay to their charge.

10 Thereafter the juſtice ſall call the perſones newlie in-dited and arreiſted; And gif they or ony vther of the arreiſted perſones foreſaidis, compeir; they ſuld be preſented to the court, and to the Schireffe, quha ſuld anſwere for them, vntill juſtice be done vpon them.

11 They quha ar attached, and compeiris not, may na-waies be accuſed for their nocht compeirance, bot be the Kingis ſervice; quhilk ſuld be verified be the Kingis letter, produced in court; Or be reaſon of ſeiknefſe: Quhilk be the auld law, was tryed be ane aſſiſe, quhidder it was Excuſe for none-compeirance.

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trew, or feinzied: Albeit the partie was abſent. *Stat. 2. Rob. Br. c. 5.* Bot now it ſuld be proven and verified be the Miniſter of the Paroch, within the quhilk the perſon excuſed dwellis: And be twa witnes perſonallie compeirand in judgement. I. 1. p. 9. c. 114. And concerning perſones abſent; it is generallie ordained, that everie barrone and free-halder, ſal anſwere in the juſtice aire, for his awin men, dwelland vpon his awin proper landes, tackes, ſteadinges, rowmes, and baronies, and ſalbe halden to enter them, or els anſwere to the King, for their vnlawes. I. 5. p. 3. c. 6. Quhat is the vnlaw in the juſtice aire. *vid. Amerciamentium.* Bot for the better vnderſtanding of the lawes, concerning fugitiues and abſentes: It is to wit, that be the auld lawes of this realme, gif the partie defender being lauchfullie warned, compeired not, bot ſend ane eſſoinzie, or excuſe; the ſamin being reaſonable, was receiued and admitted to the judge, three ſindrie daies or courtes: And gif he compeired afterwarde, and verified not his eſſoinzies to be lauchfull, he was diſtreinzied, & poynded therefore. Bot gif he neither came, nor ſend ane excuſe: The partie perſewer compeared at lauchful day and time of court, and offered him reddie to perſew, quhilk he did be the ſpace of three daies. And the thrid courte beand by-paſt, the defender was ſummoned to compeir the fourth day: The quhilk fourth court was peremptour; becauſe *ſentence definitiue* was given againſt him, conform to the claim and petition, gif he compeired nocht, *Lib. 1. c. ſummonitus. 9.* The like forme and ordour of proceſſe was obſerved in juſtice courtes. For mention is maid of the firſt aire. Ia. 3. p. 13. c. 94. And of the ſecond aire. I. 5. p. 4. c. 32. And of the fourth court. I. 3 p. 14. c. 101. And gif ony perſon indited, and lauchfullie attached, compeired not, the ſaid three courts, his pledge or law borgh was called and amerciat for the firſt, ſecond, and thrid court, and at ilk time after ilk ane of the ſaidis courtes, the ſaid pledge was poynded and diſtreinzied, and the diſtreſſe or poynd was letten to borgh, and maid free vnder caution; that the ſaide perſon indicted, ſuld compeir in the nixt aire following, to vnderly the law. And gif he was abſent at the fourth court, the peremptour doome was given againſt him. That ſik ane man was in ane amercia ment, and at the Kingis horne, and his landes and all his gudes eſcheit to the King, except he come within fourtie daies, and did bide the law: And thereafter the court beand ended, the ſaide perſon was denunced rebell, and put to the horne openlie at the mercat croce of the head burgh of the Schire. Quhilk forme of proceſſe, was ſa lang and prolixt, that in mony zeires, parties hurt and grieved, gat na juſtice: And treſpaſſoures and crimes paſſed vnpuniſhed: quhilk was the occaſion to mony perſones to commit crimes, truſting na haſtie punition nor correction to follow. Therefore King *Iames* the Fifth, ſtatute and ordained, that the proces of juſtice aire, and juſtice courtes, ſuld be peremptour at the ſecond aire or court, ſwa that fugitiues not compeirand at the ſecond aire or court, ſuld be denunced the Kingis rebelles, and put to his horne,

Of perſõs abſent or fugitiue.

The fourth court.

The ſecõd court.

and all their gudes his eſcheit. Iam. 3. Parlia. 4. Cap. 32.

12 Hereafter the Lordes of regalitie may deſire their men to be remitted to their awin juſtice Courte, and replege them, ſchawand their commiſſiones, power, and pay and therefore, and leivand ane caution behind them, called *Culrach*, quha ſalbe acted and obliſhed, in the juſtice Court, that juſtice ſalbe done, and miniſtrat, in the court of the regalitie, to the partie compleinand vpon the perſon repleged. Repleigation, be reaſon of regalitie.

13 The juſtice or his Clerkes, ſall demand and ſpeare at the Baillies of Burrowes, gif they be reddie to preſent ilk burges within their Burgh, indited to the Kingis juſtice aire: Quhilkis perſones ſuld all enter perſonallie before the juſtice, vnder the paine of ane vn-law and amerciament of court: quhais names the ſaids baillies ſall put in writ, and deliver the ſamin to the juſtice, or his clerkes. And gif they will borrow or repledge their ſaidis nichtboures, they ſall ſchaw their commiſſion, and pay therefore; And thereafter they ſall draw, or obliſh themſelues, their Commiſſion, and burgh in pledge: That thay perſones quhom they repledge, and quhais names they giue in write, ſalbe furth-cummand, and anſwerable to the laws, and challenge of the juſtice. At the quhilk time, he and his deputes ſall aſſigne to them ane certane day, to vnderlie the law, either in that aire, or thereafter quhen he ſall think ſpeedefull. And at the ſamin time, it is leaſum to the Kings juſtice, ſittand in the principall burgh of the royaltie, to giue ane aſſiſe to all the ſaidis burgeſſes, repledged of their awin nichtboures, that beſt knawis the veritie, dwelland in the ſame burgh with them. And gif there be nochtane ſufficient number of the ſaid con-burgeſſes: It ſalbe leifull to chooſe ane aſſiſe of the burgeſſes of the ſaid head burgh, quhair the juſtice and his deputes ſittis, as he ſall think expedient. Ia. 4. p. 1. c. 1. Repleigation of burrowes.

14 Gif the partie accuſed compeirand, alleagis to his remiſſion or reſpet, he ſall produce the ſamin in court, and ſall finde ſicker borrowes to aſſiſth and content the partie compleinand, within fourtie daies following: Quhair-vpon ane act is maid in court, quhairby he and his cautioner, ar obliſhed to aſſiſth and ſatisfie the partie, within the ſpace foreſaid; Quhilkis called, the acte of Adjournall. And gif he refuſis to finde caution, he ſall remaine in the Kingis priſon, quhill the ſaid fourtie daies be runne, and then his remiſſion ſalbe expired, and of na value. Ia. 2. pa. 14. c. 75. And in this caſe, quhen ony man takis him to his remiſſion, reſpet, or compoſition, in the juſtice aire, or juſtice court, and findis ſovertie to aſſiſth the partie: It is leaſum to the partie to call the ſaid ſovertie before the Lordes of Councell, conforme to the act of Adjournal, maid there-anent. Ia. 5. p. 3. c. 7. As gif ony man becummis ſovertie for ane vther, anent ſpuilzie committed be him, and for reſtitution or ſatisfaction to be maid be him therefore. He as ſovertie may be called and conveened for the gudes ſpuilzied. For the violent prices thereof, for the dammage, skaith, and intereſt ſuſteined be the perſewer, throw the committing of the ſaid ſpuilzie. *10. Martij. 1500. William Keith*, contrair the Remiſſiones, or reſpeues

Act of adjournall

Earl of *Caithneſſe*. And the ſaid ſovertie being condemned, hes gud action againſt the principall partie, for his relicte, be ane ſimple charge, vpon ſex daies warning, without peremptour ſummoundes, or ordour of table, *11. Iulij. 1543.*

15 Gif the perſon attached compeiris in the Courte, and beand accuſed, hes na relevant exception, or reaſonable defenſe; of neceſſitie he ſuld paſſe to the knawledge of ane aſſiſe, conforme to the Lawes of the Realme. At the quhilk time, the haill aſſiſours ſuld be called, and the abſentis amerciat. Ia. 6, p. 11. c. 76. And the partie accuſed, ſuld be heard to propone all and ſindrie, his lauchfull defenſes, againſt the haill aſſiſoures or ony of them, to repell them, as he may beſt of the law, and ſtay them to paſſe vpon his aſſiſe. At this time the perſon compeirand and accuſed, cummis in the will of the juſtice, or he is clenged be ane aſſiſe; or he is filed and convict. Gif he ſubmittis himſelfe, and cummis in will; It is leaſum to the juſtice, to draw him furth of the rolles, and to declare his will, and to charge him to pay ane compoſition, or ſik ane ſūme of ſilver, as he pleaſis to modifie, after the qualitie of the crime and perſon, for vp-taking and in-bringing quhairof, the juſtice aire being ended, The juſtice directis his precept, called, *Præceptum extractus itineris iuſtitiariæ*, in this forme.

Perſones cummand in will.

Wilhelmus iuſtitiarius generalis, Vicecomiti & Ballivis ſuis de .E. ſalutem. Quia in itinere iuſtitiariæ Domini noſtri regis, per nos vltimò tent. apud .F. decimo die menſis .N. Anno Domini &c. Diverſi fuerunt amerciati & pro ſuis delictis convicti, & in noſtra voluntate poſiti. Quare vobis præcipimus & mandamus, quatenus de infra ſcriptis perſonis ſubſcriptas ſummas levari faciatis, & pro eiſdem ſecundum formam iuris diſtringatis. Et primò de N. ſummam &c. De quibuſquidem ſummis ſolvatis pro expenſis noſtris in dicto itinere ſummam .N. Reſiduum verò dictarum ſummarum ſolvatis cofferariis Domini Noſtri Regis: Vel cui vobis aſſignabitur infra tempus legitimum, hoc eſt infra quadraginta dies primum diem dicti itineris proximè & immediatè ſequen. Et hoc nullo modo omittatis.

The precept of extractes.

Perſones charged

Quhen ony perſon is clenged be ane aſſiſe, the juſtice directis his Teſtimoniall, called *Litera teſtimonialis de homine mundato per aſiſam*, in maner following.

Wilhelmus iuſtitiarius generalis, univerſis & ſingulis ad quorum notitiam præſentes literæ pervenerint, ſalut. Noveritis quod comparens cerā nobis in itinere iuſtitiariæ Domini noſtri regis, tent. apud .F. decimo die menſis .N. anno Domini &c. I. de .B. indictatus & per rotulos Regios calumniatus, de arte & parte talis furti, vel talis rapinæ, vel incendij &c. Quamquidem calumniam dictus .I. in facie iudicij penitus denegavit. Et ſuper hoc ad recognitionem aſiſæ vtique ſe ſubmiſit. Quæquidem aſiſa hinc inde diligenter conſulta, Et plenius auiſata, dictum .I. à dictis calumniis ſibi impoſitis, quittum declaravit, penitus & immunem. Et hoc omnibus quorum intereſt, vel intereſſe poterit, notum facimus per præſentes. In cuius rei teſtimonium ſigillum officij noſtri appendi curavimus.

All thay perſons quha cummis in will, & ar drawen furth of the rolles, & alſo they quha ar clenged be ane aſſiſe, can na-waies in ony time there after be called or accuſed for that crime, for the quhilk they cum in will, for anis quit & clenged, ay quit & clenged. Zit nevertheles, gif ony perſō be accuſed criminallie of life & lim, at the inſtance of ane vther private man allanerlie, and is clenged & maid quite: the Kingis juſtice & his deputes, be reaſon of their office, may thereafter tak inquiſition anent the ſaid crime; & in the Kingis name accuſe the committer thereof, cōforme to the Law. Notwithſtanding that of before, he was clenged thereof be ane aſſiſe. *Lib. 4. c. Si querela. 51.* Becauſe the action or perſute of ane priuy partie, prejudgis not the King in his richt or entres, competent to him, be reaſon of his royal power. And therefore the Theſaurar, & the Kings Advocate, may perſew all malefactoures: Albeit the parties deſiſt, or privatelie agree amangſt themſelues. Ia. 6, par. 11. ca. 76.

Quhen treſpaſſours & malefactoures ar convict, as breakers of the ſtatuts, & acts conteinand dittay; they aucht & ſuld be puniſhed according to juſtice, & conforme to the tenour & paines conteined in the acts broken & contravened be them. Ia. 4. p. 4. c. 45. And ſa gif the paine conteined in the act be pecunial, they ſuld pay the ſamin. And gif it be capital, they ſuld vnderly & ſuffer the ſamin, except the King giue them remiſſion, and ſpeciall grace there-anent. As for example, landed men, lauchfullie and ordourlie convict of commoun thieft, recept of thieft, ſtouth, or reiſe, incurris the paine of treaſon, and therefore ſuld be puniſhed be tinſell of life, and confiſcation of landes and gudes. Ia. 6. p. 11. c. 30. Alwaies the Crowner may not intromet with ony gudes or geare perteining to ony treſpaſſour, convict & condemned to the death, at his awin hand, vntill the Schiriffe or his deputes, paſſe, or ſend with him, and viſie all the haill gudes; and deliver to the Crowner ſa-meikle, as he ſulde haue be reaſon, and as perteinis to his office, and bring the remanent to our Soveraine Lord, and his Theſaurar. Ia. 5 par. 14. c. 102. Perſones filed and convict

The juſtice aire beand ended; the juſtice ſall deliver the extract thereof, ſubſcrived be him to the Theſaurar, quha ſall cauſe take vp the fūmes conteined thereintill, and make compt thereof in the nixt Checker, in the quhilk compt ſalbe allowed the expenſes and charges of the juſtice, his deputes and Clerkes, as the ſamin ſalbe modified be the Lordes, Auditoures of the Checker. Ia. 6. p. 11. c. 81. The ende of the aire.

L

LAST Of gudes, how meikle it conteinis, *vid.* Serplaith.

LET Lands to borgh *dimittere terram ad pleg. vid. plegius, vide Recog.*

LEX *Apparens lib. 4. cap. 4. de indic. c. 24. Leg. Foreſt. cap. Item in placito. 16.* Signifies the law concerning ſingular battell. And *lib. 4. cap. 16.* it ſignifies ane inquiſition, maid, or taken be ane inqueſt or aſſiſe. And in the law of *Normandie. li. 9. c. 10.* It is called *Ley apparisant.* And *lib. 8. c. 8.*

All quarrelles of possessiones or moveables, quhilkis ar called *Chattel*, or of landes and immoveable gudes, suld be decided be commoun and simple quarrelles, conforme to ordour of lawe, or be lawes *Apparisantes*; quhilkis ar determinat, ather be singular battell, or be ane inquest of the cuntrie, vtherwaies called, *Loy recognoissant*. It is likewaies called, *Lex paribilis, a parium pugna, vel concertatione*, from the combat of peeres: and *Campionis*, or *lex duellonum*, quhilk law is vngodlie, and not to be vsed among Christianes. *Cuia. lib. 1. de feud.*

Loy apparisant.

Lex paribilis.

LIBERATIO, Ane fee given to ane servand, or officiar, quhilk is called ane liverie. *Leg. Malcolm. Mackeneth. c. 4.* Feodum, or fee, is commonlie of silver and money, and ane liverie is of meate or cleithes. Bot this distinction or difference, is nocht perpetuall.

LIBERVM *Tenementum*, is commounlie, and properlie called, franck-tenement, or life-rent: In Latine, *vsus fructus*, conforme to the dailie practicque of this Realm. And neverthelesse, *Liberum tenementum*, signifies, the propertie, fee, or heritage. *Donatio liberi tenementi, & concessio hæreditatis*, is baith ane. *Lib. 2. c. potest. 21. Tenementum Regium*, is called the Kingis heretage. *Lib. 2. c. Dicitur. 74.* In the quhilk signification, *Minor dicitur esse in tenemento. lib. 3. c. Generalia. 24. c. Remanere 26. Et placitum de recto & liberis tenementis per breue domini Regis de recto debet terminari. Lib. 1. c. 6.* And King *Alexander* gaue and disponed to *Duncan Forbeys, tenementum de Forbeys*. That is, the landes and heretage of *Forbeys*: quhilk Charter is zit extant. *vid. Tenementum.*

LIGEANTIA, *Lib. 2. c. Fieri. 61.* From the Italian word *Liga*, ane league, band, or obligation: as *homo ligius*, ane man, quha is oblished & bound fra the quhilk cũmis, *Alodiũ, in libris feudorum, quasi possessio sine Leode: Cuius possessor nemini est leodes siue ligius.* And *ligeantia*, is the mutuall band or obligation, betuixt the maister and the servand. *Lib. 2. c. plurib. 14. lib. 4. c. Si quis super. 36. Vid. Affidatio.* Item, the mutuall band and obligation, betuixt the King and his subjectes, quhairby, wee ar called, his lieges, because we ar bounde and oblished to obey & serue him. And hee is called our liege King, because he suld maintine, & defend vs. And the doctours of the law writis: *Quod imperator dicitur dominꝰ totiꝰ mundi, eodem modo quo rex regni: l. benè a Zenone, C. de quadr. præscript.* Quhilk suld be vnderstand, concerning the defense & maintenance, & not anent the propertie. *Quia reges non sunt domini priuatarum possessionum. Glos. in. L. Barbarius de Offic. prætor. Homagium ligium, vel cum ligeantia factum*, Is quhen the vassall, absolutelie makis homage to his superiour, against, all, and quhat sum ever persones, without exception of onie man. quhilk suld be done to na vther, bot to the King allanerlie. *Homagium non ligium, vel sine ligeantia*, is that quhilk the vassall makis to his Over-Lord, excepting and reserving the fidelitie, quhilk he aucht to the King, or his elder Over-lord, or maister. *Lib. 2. c. fieri. 61. Chessanæus. in Consuetud. Burgund. Rubric. 3. §. 3. Verb. & homage. Nu. 10. cum. seqq.* Quhilk vassall is called, *vassallus non homologus*. Like as the vther is *vassallus homologus*, in quhais

Alodium

Homagium ligium

Non ligium.

quhais aith na perſon is excepted. *Cuiac. lib. 2. de feud.*

M

MACHAMIVM, *Mechamium*, from the auld French worde *Mehaigne*, quhilk we cal, Manzie, hurt, mutilation, demembratiõ, or the loſſe or tinſell of ony member of ane mannis bodie. Or the breaking of ane bane, or quhen ane mannis harn-pan, or ony part thereof, is cutted away, or dung in. *Li. 4 c. 4. Res cum mahamio dicitur res minus ſana. Lib. 3. c. ex cauſa. 8.* Be the auld Law of this realme, he quha is mainzied, hes ane juſt cauſe to excuſe himſelfe fra ſingular battell, and zit he will bee compelled to purge, clenge, and defend himſelfe, *Per ignem & aquam. li. 4. c. 4. cap. Si quis pro latrocinio 15. Quoniam attach. c. Si quis 58. Lib. 4. c. aſſiſa 20. Stat. Alex. c. quicunque 31.* Quhairof the power perteinis not to ony Barronne; For na ſubject may compell ane vther to purge himſelfe be fire or water. *Stat. Alex. c. præterea 32.* This kinde of purgation was ane maiſt ſcharp and extreame kinde of purgation and triall: Like as we dailie vſe in commoun proverb; quhen we ſay be way of menacing, & boaſting, that we ſall gar ony perſon pas *per ignem & aquam*; That is, to ſuffer and vnderly that kinde of tryall that is maiſt ſevere and extreame. It is called, *iudicium Dei*, the judgment of God, as knawin to him allanerly. *Iter. Camer. c. cum hoc. 25.* And was in great vſe amangſt the *Longobardes*, as is exponed be *Hotomannus de feud, c. 44.* In the auld Saxon toung, and zit in Dutch, it is called *Ordeil, ordalium*, from, *or*, quhilk they vſe as *privatiua particula*, and *Del*, quhilk ſignifies ane part or portion: quhilk word we vſe in the ſame ſignification: and ſwa *Ordeil* ſignifies innocent, quha hes na part, or is not participant of the crime, quhairof he is accuſed. Purgation be the fire, is quhen ony man with bair feete, paſſis throw the fire, without ony harme or hurte, or quhen ony man dois carry and bear in his bare hand hoat burnand iron, without ony hurt of his hand, quhilk is called *ferri candentis iudicium*. In the quhilk caſe, he was decerned to be *Ordeil*, or na-waies participant of the crime. Vtherwaies, gif his fute or hand was hurte be the fire, or hoate iron: He was condemned, as participãt & fowle of the crime. And ſiklike, *Purgatio per aquam*, is quhen ony man ſuſpect or accuſed of ane crime, was caſten in hoate or cauld water. And gif he paſſed to the bottome, without ony hurt of his bodie: he was decerned *ordeil* & innocent. Bot gif he did not fal to the ground, bot did ſwimme abone; he was condemned as fowle of the crime; as is written in the auld laws of the Brittones. *Verb. Ordalium.* And be *Cuiac. li. 2. de feud. Purgatio vulgaris*, is diſcharged bee the Cannon law. *c. dilecti. extr. de purgatione vulgari. c. ex tuarum. 8. de purgat. canonica*: And likewaies be the lawes of this realme it is forbidden as vnleaſũ. *Aſſ. Reg. Da. c. Stat. etiam. 30. In fine vbi pro foſſam, lege aquam. Stat. Alex. c. Statuit Dominus 6.*

Iudicium Dei

Ordalium

Purgatio per ignem

Purgatio per aquam

Purgatio vulgaris

And be the law of God it is commanded, that nane ſulde ſuffer their ſonne or dauchter to go throw the fire. Deut. 18. 10.

MANELETA, Ane kinde of evill and Peſtilent herbe, quhilk growes amangſt the cornes, called *Guld. de Iudic. c. 7.* The Law of *maneleta*, or of the Guld, was firſt inſtitute be King *Kenneth*, quha ordained that he quha throw his fault or negligence, ſufferis ſawen landes to be filed with noyſum herbes: For the firſt fault, ſall pay ane Oxe; for the ſecond fault, ten Oxen; and for the thrid fault, ſalbe remooved fra the poſſeſſion and laboring of the land. *Hector Boetius. lib. 10.* And gif ane mailer, or tennent, filis the land with guld, & will not clenge the ſamin, he may be puniſhed as ane ſeducer, quha bringis, or convoyis ane armie within his maiſters land, to wrack and deſtroy it. *Leg. Foreſt. ca. Si nativus. 28. de Iudic. c. 6.* And gif thy awin natiue man, or bondman (*natiuus tuus*) hes guld within thy lande; For ilk ſtock or plant thereof, he ſuld pay ane Mutton, as ane vnlaw. *Leg. Foreſt. d. c. 28. de Iudic. c. 27.* The quhilk lawe, and conſtitution is keiped and obſerved, within certaine partes of this Realme; quhair the tennent ſufferand the guld to grow amangſt his cornes, payis ane wedder or ſcheipe, to his maiſter.

Terra dominicales.

MANERIVM, landes laboured with hand warke, *quaſi manurium, à mano.* Ane mainnes, or domaine landes; Or *terræ dominicales*: Becauſe they ar laboured and inhabited be the Lord, and proprietar of the ſamin, gif there be twa mainnes, perteining to ony man that is deceaſed, the principal maines ſuld not be divided; bot ſuld remaine with his aire and ſucceſſour, without diviſion; togidder with the principall meſſuage. And full ſatisfaction ſuld be maid to his wife, or relict therefore, furth of the ſecond mainnes, or vtherwiſe. *Lib. 2: cap. Dos autem. 19. de Iudic. cap. 112.*

MANSVS, *A manendo*, ane habitation or dwelling place, ſpeciallie quhair husband-men, labourers of the ground dwellis a-landwart; to the effect they may labour their land mair commodiouſlie. *L. Si plures. Nu. 9. C. de. condit. inſertis.* *Molinæus in Stil. cur. part. 3. c. 85.* Bot *Bartol. in l. Si ita. Nu. 10. de Aur. & argent. legat.* affirmis, ane Manſe to be als meikle lande, as may be gudlie tilled be twa oxen in the zeir. *Cuiac. lib. 1. de feud.* writtis, that *manſus*, is ſa-meikle lande, quhairby ane man may ſuſteine honeſtlie him ſelfe, and his familie, and pay the dewtie to his Maiſter, quhilk is called *Haredium*. Bot in the practicque of this realme, it is rather called *Gleba*; That is, ane certaine portion of arable lande. In Latine *Terra culta*: Or *terra veluti nativi venditi cum gleba. h. e. terra, Qui nativi aſcriptitij vocantur. Lib: 2. c. Pluribus. 14.* And the four aickers of land, quhilk is graunted to the Miniſters of the Evangell, within this Lande, is called ane gleebe, the quhilk ſuld be free fra payment of ony teindes. 1. 6. p. 5. c. 62. And *Carolus Magnus*, to the effect, that the Miniſters of the word of God, ſuld not periſh be hunger or povertie, gaue to ilk Kirk ane manſe. For the quhilk they ſuld paye na dewtie or ſervice. *Cuiac. Lib, 1. de Feud.*

Haredium Gleba

MANVS *Mortua, dimittere terras ad manum mortuam, hoc eſt, ad multitudinem ſiue vniverſitatem, quæ nunquam moritur.* Quhilk vtherwaies is called *Mortificare terras*: That is, to giue and diſpone landes, to the hand or power of the Kirk, College, Communitie, or ony Vniverſitie, capable to poſſeede, bruik, or ioyis gudes or landes. The quhilk is ſaide *per εναντιωσιν, ſeu à contrario ſenſu.* Becauſe ſik Kirks, Colleges, Communities, or vniverſities, dois nocht die, albeit the particular members thereof ar mortall, alters, and deceaſis. *Ius Normand. Lib. 3. c. 7.* Quhilk is conforme to *L. Proponebatur 76. ff. de iudiciis.* Swa *Manus* may ſignifie power, as in the Latine toung. Or *Manus mortua*, may bee conforme to the Scottiſh word, borrowed fra the Dutch worde *Meinzie*, quhilk ſignifies ane multitude, and ſpeciallie of folke and people. And ſwa *dimittere terras ad manum mortuam*, is to giue landes to ony Vniverſitie, and multitude of people. Alwaies it is not leaſum to ony man to mortifie ony part of his lands to the Kirk, without conſent of the King. *Lib. 2. c. Notandum. 26.* Becauſe the King may be thereby prejudged in his tennendrie, dewtie & ſervice fra the quhilk the Kirk-men in auld time wer exeemed. *Meinzie*

MARK, *In tractatu ponderibus & menſuris*, ſignifies ane ounce weicht, or halfe ane pound, quhairof the dram is the aucht part. Like as the ounce is the aucht parte of ane mark. *Cheſſa. in Conſuetud. Burgund. Rubric. 1. §. 7. Verb. 65. Solz Turnoys: ſolidus (inquit) in iure capitur pro aureo, quorum 72. faciunt libram auri. Et duodecim vnciæ faciunt Libram, & octo vnciæ marcam. Gl. & Ia. Fabr. in §. nos autem verb ſolidos. inſtit. de attil. tutor.* Dram. Solidus Libra

MARCHETA, King *Evenus* did wickedlie ordaine, that the Lord or maiſter of the ground, or Land, ſuld haue the firſt nicht of ilk maried woman within the ſamin. The quhilk ordinance, was after abrogate be King *Malcolme* the Thrid; quha ordained, that the Bride-groome ſulde haue the vſe of his awin wife. And therefore ſuld pay ane peece of money, called *Marca. Hector Boetius. lib. 11. c. 12.* For the quhilk, certaine Kye, was vſed to be payed. *Lib. 4. cap. Sciendum. 63.* Bot vtherwaies in my opinion, Mark, or March, ſignifieth ane horſe: In the auld French, Iriſh, and Dutch tounges. For in the French toung, *Marcher*, is to ride, or gang; as *Marcher devant*, to ride or gang before. And *Paulus Diaconus. Hiſtor. Longobard.* writtis, that *Mar* is called in Latine, *Equa*, quhilk wee call ane Meare. *Alciatus de ſingulari certamine. c. 32. Marcam (inquit) Germani equam dicunt, vnde Marcomanni (qui hodiè dicuntur Moravi) equitatu pollentes populi. Et Marohoduus Rex Marcomannorum, cui corpus inſtar equi erat.* Mar.

Mair-over, I finde ane auld conſtitution, written be *Lotharius Imperator, & Carolus Rex*, In this maner: *Vt miſſi noſtri, in illorum miſsatijs (h. e. commiſſarij noſtri in iis locis ad quos mittuntur) curam habeant, ne homines noſtri, aut alij quilibet, vicinos ſuos maiores, vel minores, tempore æſtatis, quando ad herbam ſuos caballos mittunt: vel tempore Hyemis, quando Mareſcalli illos ad fodrum dirigunt depradentur, aut opprimãt.* Be the quhilk it is manifeſt, that *fodrũ*, is a dutch word, *propabulo equorũ*, quhilk we cal fodder, & *marchalcus* or *mariſcallus*, is a maſter of ſtable, or a ſervãd that hes cure of the horſe Fodrum. Marſchallus.

Marche Schalk Trimarchisia. Horsmarschall. Downe.

for *March* signifies ane horse, and *Schalk* in Dutch, is ane servand, as *Godschalk*, the servand of God. And *Alciatus d.c.32.* Affirmis that the troupes of horse-men, in the armie of *Brennus*, was called *Trimarchisia*, because ilk man had three horse. And in the samin signification, we vse the word, Horse-marschel: Quhair horse is adjoyned, for interpretatiō of the word *Marche*. And likwaies in *Silverdown hill:* This word hill, is the interpretation of the vther word Downe, quhairof the ane, and the vther signifies ane thing. In Latine, *Mons*. Swa horse-marschel, is ane servand that keipis or curis horse, as is commounlie vsed within this Realme; Quhilk opinion sindrie Germane writers confirmis, and speciallie the *Scholiastes* of *Guntherus lib. 8. Austriados*. Swa leavand to ilk man his awin opinion and judgement, free to himselfe: I think that *Marchetta mulieris*, is the raide of the woman, or the first carnall copulation and conjunctiōn with her; quhilk in respect of her virginitie, is maist esteemed be men. Quhilk interpretation is confirmed alswa bee *Cuiac. Lib. 1. de feudis*.

MARITAGIVM *Hæredis*, The mariage of ane aire maill or femaill, quhilk is modified and liquidat be the Lordes of the Session, to ane certaine summe of money, after consideration of the rentall, and valure of the landes perteining to the aire; quhilk is either legall, or conventionall. The mariage Legall, is that quhilk be the disposition of the Law, perteinis to the superiour, and Over-lord. For the mariage of ane aire maill, or femail of landes halden be service of warde and relieue, being within lesse age, or being of perfite age, and not maried the time of the decease of his father, or vther predecessour, to quhom he is aire, perteinis to his immediat superiour; be the commoun disposition of the law of this realme. And gif there be maa superioures, the mariage perteinis to the first, and eldest superiour, to quhom the predecessoures of the said aire, maid first leageance and homage: Or of quhom they haue the first infestment of their landes. *Leg. Forest, c. si alicui. 75.* Mair-ouer, gif ane aire haldis certaine landes be service of warde of the King immediatlie: And certaine vther landes be the like maner of halding immediatlie of ane vther superiour, Spirituall or Temporall: The mariage of the aire, suld perteine to the King allanerlie, without ony respect of the quantitie of the lands, or of the prioritie, or posterioritie of the halding: Because the King hes not ane peere or companion, far les ane superiour within his realme. *Lib. 2. c. Restituere. 44. 6. 45. Maritagium conventionale*, is that quhilk cummis not be disposition of the Law, bot be the conventiōn & consent of parties. As quhen ony man haldis his landes in blench, or in few-ferme: His awin, or his aires mariage, na-waies thereby perteinis to his superiour: Bot zit gif hee payis ony dewtie for his landes *nomine albæ firmæ*, or *nomine feudi firmæ*, *vno cum maritagio hæredis cum contigerit*: Gif he happenis to decease, the mariage of his aire, nocht being maried, perteinis to his superiour, not be the nature of the halding of his landes, bot be the convention and provision conteined in his infestment

Maritagium legale

The mariage perteinis to the eldest superiour.

The mariage perteinis to the King.

Maritagium conventionale

Single and double availe of mariage

eſtiment. The availe of ane aires mariage, is either ſingle or double. For gif the ſuperiour requiris not ane aire, to marie, and the aire marie with out his conſent: The ſuperiour ſuld obtcine allanerlie for his mariage, be the eſtimation of the ordinar judge, ſa-meikle as may be ane competent ſumme, or tocher to the ſaid aire, conforme to his zeirlie rente: Or gif the aire refuſis to marie, hee cannot be compelled to doe the famin, *Quia matrimonia debent eſſe libera.* Bot quhen he cummis to perfite age, he ſall giue to his ſuperiour, als meikle as he micht haue fra ony vther perſon, for the ſame mariage, before he receiue his landes out of the hands of his ſuperiour, *quia maritagium eius qui infra ætatem eſt, de mero iure pertinet ad dominum feudi. leg. Foreſt. c. Si quis. 66.* The double availe of the mariage of ane aire, perteinis to the ſuperiour, quha makis ane lauchfull offer of ane partie, to the aire in mariage: Providing that the partie offered, be of equall parage. For gif the ſuperiour dois marie the aire, with ony perſone in diſparage, as with ane burgeſſe man, or with ane villaine. Gif the aire, bee of the age of fourteene zeires, or mair, and gives his conſent to the ſaide mariage, the famin is gude and valiable of the law. Bot gif the aire be within the age of fourteene zeires, quhair-throw he may nocht giue ane lauchfull conſent to his mariage. In that caſe, gif his kinſman compleinis, the Over-lord ſall tine and omit the warde, and all commoditie that he may haue thereby, vntil the aire be of lauchful age of twentie ane zeires; Quhilk ſalbe converted and employed, be the ſight of his friendes, to his vſe and commodite, be reaſon of the ſchame and diſhonour done to him. *Leg. Foreſt. c. Si quidominicus.* Quhilk is conforme to the Lawes of England. *Hen. 3. ſtat. Merton. c. 6. c. 7.* Swa gif the mariage of ony aire, or heretrix, be fallen in the ſuperiouris handes, and the aire beand lauchfullie required be the ſuperiour, or his donatar, or be ony cled with their richt, to marie ony agreeable partie without diſparage offered to him, refuſis to do the ſame, and maries ony vther perſon, without the licence and conſent of the ſuperiour, or his donatar; He auchr, and ſuld be reaſon of his contempt and diſſobedience, pay not only the ſingle availe of his mariage; bot alſo the double thereof: That is, als meikle againe, as the ſingle, be the modification of the judge, after the zeirlie rental, availe, and quantitie of the landes and living, perteining to the aire. And mair-ouer, in this caſe, be the auld law of this Realme, it is leaſum to the ſuperiour, to hald and reteine the landes, albeit the aire be of twentie ane zeires of age, vntill he be compleitlie ſatiſfied of the ſaide double availe. *Leg. Foreſt. c. de hæredibus. 64.* And it is to wit, that the ſaide requiſition, ſuld be maid in this maner. The ſuperiour his donatar, or the aſſignay maid and conſtitute be the Donatar, or ony vther perſon, haueand richt thereto, aucht, and ſuld be him ſelf, or be his lauchful procuratour, havand ſpeciall power in writ, to that effect, offer to the aire, perſonallie apprehended, then being of lauchfull age for mariage, ane agreeable partie, expreemand the ſaid perſonis name, and ſur-name, without diſparage to him: Sick-like beand of lauchfull age, and conveenient for

The forme how ane aire ſuld be required to marie.

mariage

mariage,and require the ſaid aire to ſolemnizate, & compleit the band of matrimonie, in face of halie Kirk, with the perſon that is offerred; And for compleiting thereof, aſſigne and affixe ane lauchfull daye; To wit, the ſpace of threttie daies at the leaſt to him to compleit the ſamin; within ony Kirk, appoynted be the maker of the offer, to that effect. And in the meane time of the ſaid requiſition, or before, or after the ſamin, the donatar, or ony vther aſſignay, havand richt and title of him, or of the ſuperiour (for the ſuperiour himſelfe, needis nocht to mak ony intimation of his richt & title, he beand notourlie knawin to be ſuperiour) ſuld make be himſelfe, or be his procuratour, intimation of the richt, and diſpoſition maid to him; and ſchaw the ſame, and mak the ſamin patent, in preſence of the ſaid aire; and cauſe the ſamin to be read before him, or giue, or offer him ane copie thereof: To the effect, that he thereafter may not pretend nor alleage ignorance there-anent. And thereafter the ſaid perſon, *viz.* The ſuperiour, or ony vther cled with his richt, bee quhom, or in quhais name the ſaid requiſition & intimation was maid; aucht and ſuld perſonallie, or be his procuratour, compeir at the day, & kirk appoynted of before: Bringand with him the ſaid partie offered, in proper perſon, reddie and willing to marie, quha was offerred in mariage; And there in lauchfull time, before twelue houres of the day, offer him reddie to accompliſh and fulfill that quhilk he offered, and required to be done of before. And to that effect, there remaine quhill the Sermone, or divine ſervice be done, or quhill ane houre after noone. And gif the aire compeiris nocht, or compeiris and refuſis to marie; he ſuld take inſtrumentes thereupon, in the handes of ane ſufficient Notar, of the refuſe maid be the aire, or of his none-compearance; and the offer of the agreeable partie; togidder with the intimation foreſaid; quhilk cannot be proven be witneſſe, bot be writ. *Pen. Feb. 1567.* The Laird of *Drumlangrig*, contrair *Marion Carrutheris. 21. Iunij. 1568. William*, Lorde *Forbeſſe*, contrair the Laird of *Boyne. 4. Iunii. 1575.* The Laird of *Glenbervie*, contrair the Laird of *Vdny*

MARITAGIVM Tocher gude. *Lib. 2. c. dos autem 19. in fine. c. poteſt. 21. cum ſeqq. Vid. Dos.*

MARVS, Ane officiar, or executour of ſummondes. I. 1. p. 9. c. 111. p. 13. c. 140. *Vide Recordum.* He is vtherwaies called, *Præco regis. Lib. 1. cap. cum autem. 8.* Quhair it is ſaid, *Quod die dominico vox præconis ceſſare debet*, beeauſe na ſumonds ſuld be execute vpon ane Sunday. The kings Maire is of ane greater power and authoritie, nor the meſſengers or officiares of armes, and ſpeciallie in juſtice aires, and puniſhing of treſpaſſoures. Bot now the ſaid office is given in fee and heritage to Maires of fee, quha knawis nocht their office: Bot ar idle perſones, and onely dois diligence in taking vp of their fees, from them, to quhome they doe na gude, nor ſervice to the King.

Præco Regis

MATERTERA, properlie is the Mother ſiſter, *Quaſi Mater altera.* Bot ſum-times improperlie it is taken for the Father ſiſter, in Latine,

Latine *Amita*. For *Lib. 2. c. Deficientibus 34. Poſt Avunculum. h. e. patruum eiuſque liberos, Matertera eiuſque liberi habent ius ſucceſſionis.* And be the Law of this Realme, the bairnes deſcendand of the mother ſiſter, hes na richt of ſucceſſion: Quhilk in the awin place and degree, is competent to the bairnes borne of the Father ſiſter; quhilk is manifeſt. *De iudicib. c. hæredum. 113. c. Item Nota. 115. Vbi expreſſe, Matertera dicitur eſſe Amita. vid. Avunculus.*

MELLETVM, *Medletum. lib. 1. c. 2.* Ane French word, *Melle*, diſſenſion, ſtrife, debate, as we ſaye, that ane hes melled or tuilzied with ane vther. And in the actes of Parliament, and practicque of this realme, *Chaud-mella* is ane faulte or treſpaſſe, quhilk is committed be ane hoate ſuddaintie, and nocht of ſet purpoſe, or *præcogitata malitia. Iam. 1. 11.* Mar. c. 51. And in *Libro* M. *Willielmi Skene fratris mei, Commiſſarij Sancti Andreæ. Fol. 121.* It is written, that Flycht-vyt is libertie to hald courts, and take vp the vnlawe *pro melletis.* Becauſe Flycht, is called flyting; In French, *melle*, quhilk ſome times is conjoyned with hand-ſtraikes. And in ſumme buikes *Placitum de melletis*, is called the Mute, or pley of beating or ſtricking. *Lib. 1. c. 2.*

MENETVM, *Leg. Foreſt. c. 2.* Ane ſtock horne. In the quhilk place, it is wrangeouſls written *Cornuare minutim, pro Cornuare menetum*, to blaw ane ſtock horne, quhilk commounlie is maid of Timmer & wood, or tree, with circles & girds of the ſame, quhilk is zet vſed in the Hie-lãds and Iles of this realme: quhairof I haue ſeene the like in the Cuntrie of *Helvetia*, in the zeir of God, ane thouſand, fiue hundreth, ſextie aucht, amangſt the *Zuitzers.*

MEREMIVM, *muremium*, The timmer of ane houſe. *Lib. 4. c. Si quis 55.* In the Engliſh Lawes, *Carta de Foreſta.* It is called *maremium.* And ane charter given be *Iacobus Seneſcallus Scotiæ* (king *Iames* the Firſt, before his Fathers deceaſe) To *Thomas Browſter*, of the landes of *Sacerland*, beſide *Paſlay*; now perteining heretablie, to *Matthew Steward* of *Barſcube*, cõteinis *poteſtatem incidendi meremium*; That is, licence and power to cutte ſa meikle greene woodde in the Kingis Foreſt of Raiſe, as ſuld be neceſſar to the ſaid *Thomas*, to big houſes to his awne uſe.

MESE Of Herring, conteinis fiue hundreth, for the commoun vſe of numeration, and telling of Herring, be reaſon of their greate multitude, is vſed bee thouſandes; And therefore ane Meſe, comprehendis fiue hundreth, quhilk is the halfe of ane thouſand. From the Greek word μισον, In Latine *medium.*

MESSVAGIVM, *Lib. 2. c. Dos autem. 19. c. Si quis plures 30. cum. ſeqq.* Ane principall dwelling place, or houſe within ane Barronnie, quhilk in the laws of Englãd, is called Manour, ane hall, place, or court ludge, or Manour houſe. Albeit *Valentine Leigh*, in his buik of ſurveying *Manour* of lands affirmis *meſſuagium* to be the tenement or lands arable, And the dwelling houſe or place, or Courte hal thereof, to be called *Sit*, from the Latine *Situs*: quhilk wee call the ſeate, or on-ſette. And it is not leaſum

to

giue the principall messuage, to the wife within burgh, in life rent. *Leg. Burg. c. Nullus. 107.*

MILITES, *Leg. Malc. Mak. c. 2.* And generallie in the auld lawes of this realm, ar called free-halders, haldād their lands of barons in chief; quha lies na power to hald courts of life and lim: bot onely of injuries, wrang, and vnlaw. Bot *militare servitium*, Knichtes service, is that maner of halding of lands, quhilk is called, service of ward and relieue. *Et miles opponitur Soccomanno*, and he quha haldis his landes, *Per militare servitium lib. 2. c. Si quis 30.*

Servitium militare

MISERICORDIA, Ane merciment, amerciament or vnlaw. *Leg. Forest. c. 5. de iudic. c. 40. Misericordia domini regis*, or the Kingis merciment in purpresture. *Lib. 2. cap. dicitur. 75. vid. Forisfactum. vide Amerciamentum.*

MOTE, Mute, pley, action, quarrell. Quhen King *Malcolme* the Second, gaue all his landes to the Barronnes of this realme; he reteined to himselfe *montem placiti de Scona*, The mute hill of *Scone*: quhair hee micht hald his courtes and do justice to his subjects, in deciding their pleyes, and controversies. *Leg. Mal. Mak. in prin.* Mute in the Lawes of this realme is called *placitum*. And likas in the civil law, actiones ar divided in civill and criminall: Swa *placitorum, aliud est ciuile, aliud criminale.* Pleyes ar civill or criminall: Civill ar called actiones of injuries, wrang, and vnlaw. *Leg. Malc. Mak. c. 2.* And concernis pecuniall paines, or lands and heretage. Criminall pleyes, touchis life or lim, or capitall paines, called *pœna sanguinis. Lib. 1. c. 2. c. 3.*

MORT-GAGE, *mortuum vadium, dicitur pignus, cuius fructus, vel reditus percepti, in nullo se acquietant.* It is ane French worde, signifies ane deade wed, sik as ane certane summe of silver, given vpon landes in wedset, and vnder reversion; quhilk is called ane deede wed; Becausebe the auld law of this realm, the profit thereof: that is, the annual of the silver, is recokened as ane parte of the stock & principal summe. And therefore the said stock is dead, without ony profite, as ane barren and dead tree, quhilk producis na fruit. *Lib. 3. c. 4. c. 6.* Contrair the commoun forme of alienation of landes vnder reversion, dailie vsed within this realme, called *pactum de retro-vendendo*, quhair be the annuell, is zeirlie payed, vntill the redemption of the landes. At the quhilk time, the principall summe suld be likewaies compleitlie payed. And swa baith the annuell, and the stock being payed, the profites ar not recokened in the stock, bot ilk ane of them ar severallie recokned, and severally payed, sa meikle for the profite, and sa meikle for the principall summe. *vide Vadium.*

MVLIERATVS *Filius*, is ane lauchfull sonne, gotten with ane lauchfull wife. *Lib. 2. c. Si autem 22. Ex legitima muliere seu vxore, quia mulieris appellatione vxor continetur. L. Mulieris. 13. & ibi Gl. de verb. signif.*

MVRTHRVM, *Lib. 1. c. 2. lib. 4. c. 7.* Quhairof sum is called, privat, that is mannis slauchter, quhairof the author is vnknawin: Quhairof the inquisition perteinis to the crowner; As quhen ane person is founde slaine,

slaine or drowned, in ony place or watter. Vther is publick committed be fore-thocht-fellonie, *Quia non debet murthrum adiudicari, vbi infortunium interuenit: sed locum habeat murthrum, in interfectis per feloniam.* And swa murther is committed be fore-thocht-fellonie, and not be suddaintie, *Chaud-mella*, or *infortunium*: That is, be chaunce or fortune. *Leg. Malcolm. Mak. cap. 2.* And in the lawes of England. *Anno 13. Edward. 2. cap. 1.* Murther is quhen ony man be ane propensed malice, lyis in waite to slay ane vther man. And according to his malicious intent, slayis him. *Molinæus in stil. Cur. Parl. part. 1. cap. 13.* Conforme to the law of *Normandie. Lib. 12. cap. 1.* Affirmis, that murther is different from simple slauchter. Because murther is committed wittinglie, and willinglie, bee anequha of set purpose lyis quietly in awaite for that effect. And slauchter is committed without ony fore-thoucht-fellonie, vpon ane haistie suddantie, quhilk in Latine is *Rixa*; And in French, *Chaud-mella*, In the quhilk place he writtis, that three crimes perteinis to the high justice; wilfull fire, ravishing of weemen, and murther. Bot be the law of this Realme, foure crimes ar called the foure poyntes of the Crowne; wilfull-fire, ravishing of weemen, murther, and robberie or riefe: Because the jurisdiction, or cognition thereof, perteinis allanerlie to the King, and to na subject Spirituall, nor Temporall, except the samin be speciallie granted to him be the King. *Lib. 1. c. 2. leg. Malcom. Mak. c. 4. lib. 4. cap. Die lunæ 13. ass. reg. Da. c. 1.*

Rixa.

Pleyes of the crown

N

NAMARE, *Namos capere*, to take ane poynd, or ane distresse. It is ane auld Saxon word: For *Naman* in latine, *Pignorari siue pignus auferre.* And *Namatio*, signifies the taking of ane poynd. *Leg. Britonum. verb. Pignorari.* In the Law of *Normandie*, *Nami* commounlie signifies ony gudes or geare moveable, or vn-moveable, taken for execution of ane decreet. *Pignora capta, & bona capta pignori. vt in L. a Diuo Pio. 15. ff. de re iudicat.* Be the Laws of this realm, na poynd suld be taken, bot for ane confessed or proven debt. And the samin suld be publicklie schawin, & maid manifest to all passengers be the way, and to all parties following the samin. *Lib. 4. cap. Si quis namos 30. cum seqq.* Na man may poynde within ane vther mannis boundes or jurisdiction, bot for debt aucht and to him, except the Kingis Baillie be present. The poynd or distresse, suld be conforme to the quantitie and valure of the debte. Na person may be poynded, bot the debtour, or his sovertie or pledge. The poynd suld remaine within the samin Barronnie, quhair it is taken, in ane place perteining to him, quha takis the samin, or at the least, in the nixt adjacent barronnie, within the samin Schireffedome, and not in Fortalices or Castelles. *Mat. 2. Rob. Br. cap. Item ordinatum. 8. Curiæ de namo vetito*; that is, of deforcement, be the auld Law, perteinis to the king allanerlie. *De Maritag. cap. Sciendum. 17.*

Nami

NATIVI

NATIVI, Borne slaues or servandes, *vide Bondagium.*

NONE-ENTRES, Is quhen ane vassall, vest and saised in the fee and propertie of the landes deceasis, leavand behinde him ane aire, quha beand of lauchfull age, may enter to the landes, be taking of saising thereof, and zit enters nocht. In the quhilk case, the landes arin the handes and power of the immediate superiour, be reason of none-entresse, *Propter negligentiam hæredis, ius suum non prosequentis. Stat. Rob. 3. Cap. Nota. 21.* Mair-over, there is twa kinds of None-entres: The ane simple, nocht followand after ane warde, in the quhilk, the superiour of the Landes, vntill they be declared be decreete of ane Ordinar judge, to bee in None-entresse, suld haue allanerlie the retoured maill thereof, conforme to the new extent. And after the declaratour, the superiour may remoue the tennentes, or occupie the landes, as he pleasis, induring the time of the None-entresse. The vther kinde of None-entresse, is that quhilk followis after ane warde: As quhen landes ar halden be seruice of warde and relieue; and the aire is *Minor*, and may nocht enter: The samin landes perteinis to the superiour, be reason of warde, and nocht of None-entresse. For quhair there is warde, there is na None-entresse, be reason the warde, sa lang as it induris, stoppis the None-entresse. Bot quhen the warde expyris, togidder with the twa termes of the relieue; The None-entresse beginnis, gif the aire beand of perfite age, enteris nocht to the landes, and obteinis saising thereof. The quhilk None-entresse, requiris na declaratour, bot is of the like nature, with the warde preceidand. And induring the time thereof, the zeirly mailles and dewties of the landes, as they giue be tack and assedation, perteinis to the superiour; or he may remoue the tennentes and possessoures therefra, and occupie the samin as he please, like as he micht do, in the time of the warde. Mair-ouer, this kinde of None-entresse, beand given and disponed be the King, or vther superiour, to the appearand aire himselfe, or to ony vther person, is sufficient and valiable to the donatar, for all zeires and termes preceeding the gift and disposition, and three termes ahent the perfite age of the aire allanerlie. And endis and ceasis after the ishue and out-running of the saids three termes. And gif the aire enters nocht within the said space: It is leasum to the King, or vther superiour, to dispone of new, the said none-entres, to quhom he pleasis, to be vsed be him, vnto the entrie of the lauchfull aire; as was decerned and ordained be the Lordes, and Auditoures of the Checker, in the Moneth of Iulij 1596. And conforme thereto decided be the Lords of the Session in Iulij 1597. The Laird of *Capringtoun*, contrair the Laird of *Hessilhead*, quilk is not disconforme to the laws of the fewes, quhair be the aire of the vassal, not desirand inuestiture, or possession fra his superiour, within zeir and daye after the decease of the vassall his predecessour, tinis and forefaltis his few, and the samin perteinis to his superiour. §. *Et ibi Gl. quo temp. milit. inuestit. aut petere debent. lib. 1. de feud.*

NOVA *Dissasina*, recent spuilzie or ejection, *vid. Dissasina.*

O

OCHIERN, *Ogetharius*, Isane name of dignitie, and of ane free-halder. *Stat. Alex. c. recordatio. 26.* and appeiris to be of equall honor, and preheminence with the son or daughter of ane *Thane*, quha haith hes the like *Marcheta*, *viz.* twa Kids, or twelue pennies. *Lib. 4. c. sciendum 63.* And likewise the *Cro* of ane *Oye* of ane *Thane*, & of an *Ochiern* is four Kye. *lib. 4. c. statuit. 64.* And the vn-lawe quhilk the King may take fra ane *Thane*, is sex Kye, and from ane *Ochiern*, fifteene scheip, or sex schillings. *Ass. reg. Da. c. recordatio. 17.*

ORA, ane auld Saxon worde, and signifies mettall, sik as brasse or golde: And mairouer, in auld times it was ane piece of cunzied silver or golde. For *tres ora aurea*, are the price of ane Cowe. *lib. 4. c. sciendum 63.* Vra.
From this comes the worde zit commonly vsed, *Vre*, as leid *Vre*: and in the Garviach within the schireff-dome of *Aberdene*, there is ane hill called *Dunnyndure*, *monticulus metalli*: and the scheep there pastured, hes their teeth couloured with zeallowe coulour, quhilk is ane taken of abundance of mettall.

ORIGELLVM, *quasi auricellum*, ane Habergion, maid of mailzies quhairof the edges are of mailzies of zellow coulor, resembland the coulour of golde or brasse. *Stat. 2. Rob. Br. c. ordinatum 27.* quhair it is called *Habergellum. vid. Hawbert.*

OVT-FANG-THIEF, *vid. Infang. thief.*

P

PANNAGIVM *Porcorum*, ane French worde, signifies the dutie quhilk is giuen to the king, for the pastourage of Swine in his Forrestes. *Leg. foresti. c. 5. 6. 8.* As it is manifest in the lawes of England, in the chartour of Forrestes, quhair *Pannage*, is called ane certaine summe of siluer, quhilk the awner of ane Parke, or of some great wood, quhair-in there is great store and abundance of Maste, Aike, Betche, or vther trees, vsis to take of his tennents or vthers, for their Swine, that sall feede there, betuixt *Michael-mes* and *Martine-mes*. Item *Pannagium*, signifies an pairt of the Kingis demaine, or propertie, giuen to his second, or vther zounger sonne, or cousing, quhairof *Chopinus* writes, *de domanio regis Francia*. But hereof no mention is maid in the lawes of this realme.

PARTICATA, *vel perticata terra*. From the French word *perche*, meikle vsed in the Englisch lawes, ane ruid of land. *leg. burg. c. 5. c. perticata. 140. stat. Wilh. 2 perticata. 13 quon. attach. c. de brevibus 31.* It is of verity, that three beare cornes without tailes, set togidder in length, makis ane inche Inche. Of the quhilk cornes, ane sulde be taken off the mid rig, ane off the side Fute. of the rig, and ane off the furrow. Twelue inches makis ane fute of mea- Elin. sure: Three fute and ane inche, makis ane Elne: Sex elnes lang, makis Fall. ane Fall: quhilk is the common lineall measure and mette. And sexe elnes lang, and sex elnes broad, maks an squair & superficiall sall, of mea-